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T H E

JUSTICE of the PEACE,

A N D

12 Ff

PARISH OFFICER.

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of WESTMORLAND and CUMBERLAND.

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Excise and Customs.

AS the customs and excise, so far as justices of the peace, constables and other peace officers, are concerned therein, are in some measure connected and interwoven with each other; it is thought proper here to represent them together, that the reader may at once have a full and distinct comprehension of the whole.

- I. Of the customs in general.
- II. Of the excise in general.
- III. Of the several goods in particular, under the management of the commissioners of the customs and excise.

I. Of the customs in general.

Note; There are two general books of rates for ascertaining the values of goods on importation, according to which the customs shall be paid; the one signed by Sir *Harbottle Grimstone* baronet, speaker of the house of commons, referred to, established, and confirmed by the act of tonnage and poundage 12 C. 2. c. 4. The other, signed by *Spencer Compton*, esquire, speaker of the house of commons, being an additional book of rates of goods imported, not particularly specified in the former book of rates: The latter of which, as being part of the act itself, is inserted in the statutes at large, 11 G. c. 7. but the former, altho' it is as necessary to be known, yet being no part of the act, is not inserted therein; but may be found in Mr. *Cay's* abridgment. And to these divers additions have been made by subsequent acts of parliament.

1. When any commission shall be issued for constituting commissioners of the customs, two of them first named in the commission shall be sworn before the chancellor, or chief baron of the exchequer, or master of the rolls, *for the true and faithful execution, to the best of their knowledge and power, of the trust committed to their charge and inspection, and that they will not take or receive any re-*

Appointing and swearing commissioners.

Excise and customs.

ward or gratuity, directly or indirectly, other than their salaries, and what shall be allowed them from the crown, or the regular fees established by law, for any service to be done, in the execution of their employment in the customs, on any account whatsoever.

6 W. c. 1. f. 5.

And every other of the commissioners and patent officers, and every of their deputies, clerks, or servants, and all other officers who shall have any employment in or about the customs, shall at their admission, if it is within the ports of *London*, take the said oath before two commissioners; and elsewhere, before two justices of the peace in the county, town, or place, where his employment shall be; and every person not taking such oath, shall forfeit his office. *id.*

And the persons hereby respectively authorized to administer the oath, shall certify the taking thereof, to the next sessions to be held for the county or place where the oath was administered to be kept amongst the records, *id.* f. 6.

In what cases
they only can
make seizures.

2. By the 13 & 14 G. 2. c. 11. No ship or goods shall be seized as forfeited for unlawful importation or exportation, or non-payment of customs, but by officers of the customs. f. 15.

But by the 8 G. c. 18. Spirituous liquors, *British* or foreign, and all foreign exciseable liquors forfeited, together with the casks or other package, may be seized by any officer of the customs or excise, or by such persons as shall be deputed by warrant from the lord treasurer, or under treasurer, or by special commission under the great or privy seal, but by no other person. f. 24.

And by the 33 G. 2. c. 9. Officers of excise as well as those of the customs, may seize all ships, vessels, boats, wherries, pinnaces, barges, or gallies, liable to be forfeited for any of the reasons contained in any of the acts of 8 G. c. 18. 11 G. c. 30. 12 G. c. 28. hereafter following, and proceed to condemn the same as the officers of the customs may do. f. 24.

And by the 9 G. 3. c. 6. The officers of excise may seize horses, or other cattle and carriages made use of in carrying brandy, arrack, rum, spirits, and strong waters (customs and other duties not being first paid or secured), and proceed to condemnation thereof, in the same manner as officers of the customs may do.

Shipping or land-
ing goods with-
out warrant.

3. If any goods shall be laden or taken in from the shore, into any barge, hoy, wherry, or boat, to be carried aboard any ship outward bound; or laden or taken in out of any ship

ship coming in from foreign parts without a warrant and presence of an officer of the customs; such barge, hoy, wherry, or boat shall be forfeited; and the warfanger offending shall forfeit 100*l*. and the master, purser, boatswain, or other mariner of any ship inward bound, consenting thereunto, shall forfeit the value of the goods so unshipped; half to the king, and half to him that shall sue. 13 & 14 C. 2. c. 11. s. 7.

And if any carman, porter, waterman, or other person, shall assist in the taking up, landing, shipping off, or carrying away, any such goods; such person being apprehended by the warrant of any justice of the peace, and the same being proved by the oath of two witnesses, the said offender for the first offence shall by the justice be committed to the next gaol, there to remain till they find surety of the good behaviour for so long time until he be discharged by the lord treasurer, chancellor, under treasurer, or barons of the exchequer; and for the second offence he may by any justice of the peace as aforesaid, be committed to the next gaol, there to remain for two months without bail, or until he shall pay to the sheriff 5*l* for the king's use, or until he shall be discharged by the court of exchequer as aforesaid. *id.*

4. And here, on occasion of the forfeiture of the boat or vessel, mentioned in the preceding section, it is proper to take notice of a general clause in the statute of 8 G. c. 18. which brings the cognizance not only of the said forfeiture, but also of several others hereafter following, under the jurisdiction of the justices of the peace; and consequently enlarges considerably this title relating to the customs; to wit, In regard that the keeping and maintaining the horses seized, from the time of the seizure, to the time of condemnation in the court of exchequer, is very chargeable, and the charge of condemning such vessels, boats, and horses, is very great; therefore it is enacted, that all seizures of vessels or boats of 15 tons or under, by virtue of any act relating to the customs, for carrying uncustomed or prohibited goods, or for relanding debenture goods; and all seizures of horses, or other cattle, or carriages for carrying such goods, may be heard and determined in such manner as is appointed by the act of 6 G. c. 21. except as therein excepted; that is to say, All such seizures may in a summary way be determined by two justices of the peace residing near the place where the seizure is made; who shall summon the party accused, and on appearance or default proceed to hear and give

Power of justices
in case of ships,
cattle and car-
riages forfeited.

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judgment, and issue warrants for sale of such as shall be by them condemned: whose judgment shall not be liable to any appeal or certiorari. 8 G. c. 18. f. 16.

Justices on trial
to proceed on
the merits.

5. And by the 9 G. 2. c. 35. In trials of seizures, the justices shall proceed to the merits of the cause, without inquiring into the form or manner of seizure. f. 34.

Officer on trial
need not prove
his commission.

6. And if any question shall arise, whether any person be an officer of the customs, proof shall be admitted, that such person was reputed to be, and had acted in such office, and at the time when the matter in controversy was done, without proving or producing the commission. 11 G. c. 30. f. 32.

Proof to lie on
the owner.

7. And if any dispute shall arise, whether the customs have been paid; the proof shall lie on the owner, and not on the officer. 12 G. c. 28. f. 8.

Goods relanded
after drawback.

8. If any foreign goods specified in any certificate, whereupon any drawback is to be made, or debentures to be made forth for any such drawback, shall not be really and *bona fide* shipped and exported (danger of the seas and enemies excepted), or shall be landed again, unless in case of distress to save the goods from perishing, which shall presently be made known to the principal officer of the port; then not only all such certificate goods shall be forfeited, but also the person relanding the same, or concerned therein, or to whose hands they shall knowingly come, or by whose privity they are relanded, shall forfeit double value of the drawback, together with the vessels, boats, horses, cattle, and carriages, made use of in landing or carrying the same; half to the king, and half to him that shall inform, seize, or sue in the courts at *Westminster*. 8 Ann. c. 13. f. 16. But by the clause abovementioned, the boats, cattle, and carriages, may be recovered before the justices of the peace.

Unshipping with
intent to land.

9. By the 8 An. c. 7. If any goods shall be unshipped, with intention to be landed, without paying customs, or if any prohibited goods shall be imported; then not only the said goods shall be forfeited, but also the persons assisting or concerned therein, or to whose hands they shall come, shall forfeit treble value, together with the vessels, boats, horses, and other cattle, and carriages; half to the king, and half to him that shall seize or sue. f. 17.

Power to search.

10. Any person authorized by writ of assistants out of the exchequer, may take a constable or other publick officer near, and in the day time enter any house or place, and in case of resistance break open doors, chests, and other package, there to seize, and from thence to bring goods pro-

prohibited and uncustomed, and secure them in the king's warehouse. 13 & 14 C. 2. c. 11. f. 5.

11. If prohibited or customable goods shall be found by any officer of the customs, in a bark, hoy, lighter, barge, boat, or wherry on the water; or coming directly from the water side, without the presence of an officer, or if such goods shall, on information of a credible person, be found in any house or place, on search made as by the said statute of 13 & 14 C. 2. c. 11. such officer may stop and put the said goods in the king's warehouse, until the claimer shall make proof before the commissioners, if it be in the port of *London*, that the duties have been paid or secured, or that the same had been bought in a lawful way of trade, and that such person verily believes the duties to have been paid, or that the said goods had been compounded for, or condemned in the exchequer, or been otherwise delivered by writ of that court, and that the prohibited goods had been compounded for, or condemned, or otherwise delivered, as aforesaid; in which case, the goods shall be delivered without delay or charge. And if the goods be stopped in any other port, the claimer shall make the like proof and deliver the same to the collector, or in his absence to one of the other principal officers of the port, which proof shall forthwith be transmitted to the commissioners for their directions touching the delivery of the goods, or for seizing the same and prosecution. 6 G. c. 21. f. 39.

Goods passing
may be stopped
and seized.

Provided such proof be made within ten days; in failure whereof the goods may be seized and prosecuted as by the laws against the importation of prohibited or uncustomed goods. f. 40.

If on such prosecution, where no application hath been made to the commissioners or officers aforesaid, and not otherwise, the property of the goods shall be claimed, and the question shall arise whether the duties were paid, or the goods had been compounded for, or condemned, or otherwise delivered by writ out of the exchequer, or bought in a lawful way of trade, the proof shall lie on the claimer; and if the claimer recovers his goods, he shall have costs likewise, which shall be reckoned as a full satisfaction for damages. f. 41.

Where the claimer shall make proof, either by oath before a justice of the peace, or otherwise, to the satisfaction of the commissioners or officers of the customs, so as to induce them to order a delivery of the goods, and if the owner shall receive any damage by such stop; he may bring his action for his reasonable damages. f. 42.

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But the officer, if he pleases, may prosecute, notwithstanding the directions of the commissioners; in which case he shall be liable to be sued by the owner for recovery of his goods with full costs; or if the commissioners shall give no directions for delivery of the goods, the owner nevertheless may sue for them with costs and damages. *f. 43.*

Goods taken in
at sea.

12. If any foreign goods shall be taken in at sea, or put out of any ship within four leagues from the coast, without payment of the customs and other duties (unless in case of necessity, or for a lawful reason, of which the master shall give immediate notice and make proof, before the chief officer of the customs of the first port where he shall arrive); the same shall be forfeited, and every person aiding or concerned therein shall forfeit treble value; and the vessel into which the same shall be taken, shall be forfeited, not exceeding 100 tons; and the master of the vessel out of which they are taken, shall also forfeit treble value; half to the king and half to him that shall seize or sue. *9 G. 2. c. 35. f. 23.*

Vessel hovering
near the coast.

13. Where any vessel, coming from foreign parts, having on board any goods liable to forfeiture by any act now in force on being imported, shall be found at anchor, or hovering within the limits of any port, or within two leagues of the shore; or shall be discovered to have been within the limits of any port, and not proceeding on her voyage, wind and weather permitting, unless in case of unavoidable necessity and distress of weather, of which the master or other person having charge of the vessel shall give notice and make proof before the collector or other chief officer of the customs, immediately after the arrival of the vessel in such port: all such goods, together with the chests, boxes, casks, and other package, or the value thereof, shall be forfeited, whether bulk shall have been broken or not; and the vessel also, with her tackle and furniture, shall be forfeited, provided such vessel doth not exceed the burthen of 50 tons; half the produce, after the sale thereof, (charges deducted,) to be to the king, and half to the officer who shall make the seizure. *5 G. 3. c. 43. f. 38.*

Officers may
search coasting
vessels.

14. Any officer of the customs or excise (producing his warrant or deputation, if required) may go on board any coasting vessel, and search for prohibited and uncustomed goods, and continue on board during the vessel's stay within the limits of the port; and if any person shall obstruct him he shall forfeit 100*l.* *9 G. 2. c. 35. f. 29.*

15. On

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15. On oath made before a justice of the peace, that any person is lurking within five miles of the sea coast or any navigable river, and there is reason to suspect that he waits with intent to be aiding in running goods, the justice may grant his warrant to bring him before him; and if he shall not give a satisfactory account of himself and his employment, or otherwise make it appear that he is not concerned in any clandestine or unlawful business, he shall be committed to the house of correction, to be whipt and kept to hard labour not exceeding one month: And the commissioners of the customs or excise shall cause to be paid to the informer a reward of 20s. for each offender. *Persons lurking within five miles of the coast.*
9 G. 2. c. 35. f. 18.

But if such person shall desire time for clearing himself, he shall not be punished by whipping or other correction, but committed to the common gaol till he shall so do, or till he find security not to be guilty of any the said offences.
f. 19.

16. If any person shall knowingly receive or buy any run goods; he shall on conviction (after summons) by confession, or oath of one witness, before one justice where the offence shall be committed or the offender shall be found, forfeit 20l. half to the informer, and half to the poor, by distress; for want of distress, to be committed to prison for three months. 8 G. c. 18. f. 10. *Buying or receiving run goods.*

17. And by the 11 G. c. 30. If any person shall harbour, keep, or conceal, or suffer to be harboured, kept, or concealed, any prohibited or run goods liable to pay customs; he shall (whether he claim any property in them or not) forfeit the same, and treble value, to be recovered and mitigated as by the laws of excise, or in the courts at Westminster, half to the king, and half to him that shall sue. f. 16. *Concealing run goods.*

18. And if any person shall offer to sale any prohibited goods, or which have been, or are by him pretended to have been run; the same, together with the package shall be forfeited, and be seized by the party to whom they are offered to sale, or by any officer of the customs or excise. Provided that if the seizure is within the bills of mortality, then within 24 hours, if elsewhere within 48 hours, they be put into the king's warehouse near the place of seizure, and if it be far from any such warehouse, then in some excise office near. 11 G. c. 30. f. 18. *Offering to sale run goods.*

And the person offering them to sale, shall also forfeit treble value. f. 19.

And

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And the said goods, if sold, may be seized (with the package) from the buyer, either by the seller or any such officer. *f. 20.*

And the buyer shall also forfeit treble value. But both buyer and seller shall not be prosecuted for the same goods, but whether of them shall first prosecute the other shall be discharged; but if prosecution shall not be commenced in a month, the warehouse keeper may prosecute. *f. 21.*

Which said forfeitures shall be recovered and mitigated as by the laws of excise, or in the courts at *Westminster*; half to the king, and half to him that shall sue. *f. 39.*

Porter carrying
run goods.

19. All porters, and others, knowingly carrying run or prohibited goods, and who shall be convicted thereof (on appearance or default) on the oath of one witness, or confession, before one justice where the offence shall be committed; or the offender found, shall forfeit treble value, half to the informer, and half to the poor, to be levied by distress by warrant of such justice, and for want of distress to be committed to the house of correction, to be whipt and kept to hard labour not exceeding three months. *9 G. 2. c. 35. f. 21.*

Persons armed
or disguised carrying
run goods.

20. Persons passing with foreign goods landed without entry, within 20 miles of the coast, if they be more than five in number, or armed, or disguised, or who shall forcibly resist the officers of the customs or excise in seizing run goods, shall be guilty of felony, and transported for seven years. *8 G. c. 18. f. 6.*

But if any offender shall in two months after his offence and before conviction, discover his accomplices, so as two or more be convicted; he shall have a reward of 40*l*, if the value of the run goods exceed 50*l*, and shall be acquitted. *f. 7.*

And any other person discovering any one offender, in three months, so as he be convicted, shall have in like manner 40*l*, over and above what he may be intitled to on account of the said run goods. *f. 8.*

And by the *9 G. 2. c. 35.* Persons being two or more in company, who shall be found passing within five miles from the coast, or from any navigable river, with one or more horses, or with any cart or carriage, whereon there shall be laden more than six pounds of tea, or spirituous liquors exceeding five gallons, not having paid the duties, and not having a permit, or any other foreign goods of above 30*l* value, landed without entry and payment of duties, and shall carry any offensive arms, or wear any disguise, or shall forcibly obstruct, or resist any officer of the customs or excise

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cise in seizing or securing any prohibited, uncustomed, or run goods, or other execution of their office, shall be deemed runners of foreign goods, within the meaning of the said act of 8 G. c. 18. altho' no proof shall be made that such goods were run, or had not been entred and paid duty; but the proof of such entry and payment, and how they came by the goods, shall lie on such persons; and every person convicted of any such offence, shall be guilty of felony, and transported for seven years. *f. 13.*

And all the goods so found, weapons, horses, cattle, carriages, and their furniture, chests, bags, casks, and other package shall be forfeited. *f. 14.*

And if any officer or other person shall lose any limb, or be otherwise maimed or dangerously wounded by any offender last mentioned, or in endeavouring to apprehend him, he shall on the conviction of such offender have a reward of 50 l, over and above any other reward he may be intitled to by this act. *f. 15.*

And if any person be killed in endeavouring to apprehend such offender, his executors or administrators (on certificate under hand and seal of the judge of assize for the county where the fact was done, or of the two next justices of the peace, of such person being so killed) shall have 50 l, over and above any other reward they may be intitled to by this act. *f. 15.*

And if any person shall, in three months after such last mentioned offence committed, discover to the commissioners of the customs or excise, any offender so as he be convicted; he shall have 50 l, over and above any other reward he may be intitled to by any law. *f. 16.*

And the commissioners of the customs or excise shall cause the rewards to be paid out of the said revenues, on producing a certificate under the hand of the judge certifying the conviction, or on producing such certificate of the person being killed: and if any dispute shall arise between the persons intitled to the reward, the same shall be adjudged by the commissioners. *f. 17.*

21. And upon information on oath before a justice of the peace, that any persons, to the number of three or more, are or have been assembled, to be aiding in the clandestine running, landing, or carrying away prohibited and uncustomed goods, or to rescue them after seizure, and armed with fire arms or other offensive weapons; he shall grant his warrant to the constables and other peace officers, requiring them to take to their assistance as many as may be thought necessary for apprehending such persons: and he

Apprehending
riotous smug-
glers.

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he may, if on examination he find cause, commit them to the next county gaol, there to remain without bail or mainprize, until they be discharged by due course of law: and such persons, on conviction of their being assembled and armed as aforesaid, shall be adjudged guilty of felony, and transported for seven years. 9 G. 2. c. 35. §. 10.

And the apprehender for every person convicted shall have a reward of 50l, immediately after conviction and demand made, tendring a certificate under the hand of the judge, certifying the conviction, and that he was taken by the person claiming the reward. §. 11.

And if any person shall lose a limb, be maimed or dangerously wounded, in apprehending or endeavouring to apprehend, or pursuing such offender; he shall on such conviction have a reward of 30l, over and above any other reward that he shall be intitled to by this act. §. 11.

And if any person shall be killed in taking, or endeavouring to take such offender; his executors or administrators (on certificate under the hand and seal of the judge of assize of the county where the fact was done, or of the two next justices of the peace, of such person being so killed) shall have a reward of 50l, over and above any other reward they may be intitled to by this act. §. 11.

And if any offender shall in three months after his offence, and before his conviction, discover two or more accomplices, to the commissioners of the customs or excise, so as to be convicted; he shall have 50l, for every person so convicted, and be discharged of his offence. §. 12.

The said rewards to be paid as in the last section.

Outlawed smugglers.

22. By the 19 G. 2. c. 34. If any persons, to the number of three or more, armed with fire arms or other offensive weapons, shall be assembled in order to assist in the exportation of goods prohibited to be exported, or in running any prohibited or uncustomed goods, or goods liable to pay duties which have not been paid, or in relanding goods after drawback, or in rescuing the same after seizure, or in rescuing any person apprehended for any offence made felony by any act relating to the customs or excise, or in preventing his being apprehended; or if any person shall have his face blacked, or wear any disguise, when passing with such goods; or shall forcibly hinder or assault any officer in the seizing such goods, or dangerously wound any officer attempting to go on board any vessel, or shoot at or wound him when on board; he shall be guilty of felony without benefit of clergy. §. 1.

And

And persons charged with any the said offences, before a justice of the peace, by information on oath of one or more credible persons to be subscribed by him or them, the justice shall forthwith certify the same under his hand and seal, and return the information to one of the secretaries of state, who shall lay the same before the king in council; who may thereon make his order, commanding the offender to surrender in 40 days after the first publication thereof in the gazette, to the lord chief justice, or any other of the justices of the king's bench, or to some justice of the peace, who thereon shall commit him to gaol, to answer the charge against him according to due course of law: Which order the clerks of the privy council shall cause to be forthwith published in the two successive gazettes, and to be transmitted to the sheriff where the offence was committed; who shall in 14 days cause the same to be proclaimed between ten in the morning and two in the afternoon, in the market places, on the market days of two market towns in the same county, near the place where the offence was committed; and a copy of the order shall be affixed on some publick place in the said towns: And if such offender shall not surrender pursuant to such order, or escape after surrender, he shall be attainted of felony without benefit of clergy. *f. 2.*

And if any person after the time appointed for surrender, shall knowingly harbour such offender; he shall, on conviction within one year, be guilty of felony, and transported for seven years. *f. 3.*

And every person who shall take, or discover so that he may be taken, any person so advertised and not surrendering, and cause him to be brought before a judge of the king's bench, or justice of the peace for *London* or *Middlesex* (who shall commit him to *Newgate*), shall receive 500*l.* in one month after execution awarded, from the commissioners of the customs or excise respectively: And if an offender, against whom no such order in council shall have been made, shall himself so discover or apprehend any other against whom an order hath been made; he shall be acquitted of all his own offences for which no prosecution is then commenced, and shall also have his share of the præmium: And if any person shall be maimed or grievously wounded in apprehending such offender; he shall receive 50*l.* over and above such other reward as he may have as apprehender: And if any person shall be killed in apprehending, his executors or administrators shall receive 100*l.* *f. 10.*

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But nothing herein shall prevent ministers of justice from taking such offender by the ordinary course of law; but if he shall be taken before the expiration of the time limited for his surrender, no further proceedings shall be had upon the order made in council, but the offender shall be brought to trial by due course of law. *f. 4.*

And if any offender, before order for his surrender, shall discover two or more accomplices, so as they be convicted; he shall receive 50 l. for each, and be discharged of all offences for which no prosecution shall be then commenced. *f. 11.*

In the case of *John Harvey*, E. 20 G. 2. The attorney general, suggesting the several particulars to have been complied with as in this act specified, prayed that execution might be awarded according to the said act. The defendant traversed all the facts contained in the suggestion. On which, at another day, the attorney general went into the proof of the several issues.—The several facts touching the laying the information before the justice (Mr. *Burdus*) against the prisoner and others; his certifying it in due manner to the duke of *Newcastle*, secretary of state; the duke's laying it before the king in council; the order of council (which was produced under the seal of the council) requiring the prisoner and others to surrender within 40 days after publication, in the *London gazette*; the transmitting this order to the printer of the gazette; the publication of it in due time in two successive gazettes; and the transmitting it to the sheriff of the county of *Suffolk*, in order to its being proclaimed and published as the act directeth,---were well proved. Then the under-sheriff of *Suffolk* and other witnesses were called to prove the proclaiming and fixing up the order in two market towns near *Beauacre*, the place where the fact is charged in the information taken by Mr. *Burdus* to have been committed. And it appeared on their evidence, that it was proclaimed and fixed up at *Ipswich*, which is 30 miles from *Beauacre*; at *Hadly*, which is 42 miles from *Beauacre*; and at *Leosloff*, which is 5 miles from *Beauacre*; and at no other places: and that there are five or six market towns nearer to *Beauacre* than *Ipswich*; particularly *Southwold* 5, and *Beacles* 8 miles.---Mr. *Ford* assigned counsel for the prisoner, insisted that the act had not been complied with. The act indeed doth not say that it shall be in the next market towns, but still it must be in the market towns near the place. And the distance of 30 miles cannot with any propriety be called

called *near*, when it appeareth, that there are at least three market towns within a third part of that distance.--- And of this opinion was the court. This, they said, is a very penal law. And it would be of dangerous consequence to give the sheriff a greater latitude, than the legislature intended to give him. Some latitude it did intend to give, and therefore did not confine him to the *next* market towns, because that would have rendered the execution of the act difficult, and subject to great niceties. But the law did not intend to leave the matter wholly to the discretion of the sheriff, and therefore it requireth that it be done in the market towns *near* the place. This word is plainly restrictive of the sheriff's power. It is a guide to his discretion in the execution of the act. And what doth it mean? Not surely the most remote town; nor doth it mean a town comparatively remote, as it is plain from the evidence, *Hadly* and *Ipswich* are.--- On the whole; the court without summing up the evidence, directed the jury to find for the king, on all the issues, except those which regarded the proclamations in the market towns near *Beauacre*; and on those to find for the prisoner, which they did. And then the court ordered, that the attorney general take nothing by his prayer. And that the prisoner be remanded to *Newgate*, in order to answer for the original offence he stands charged with in the information taken by Mr. *Burdus*, if the attorney general shall think fit to indict him for it. *Fest.* 51.

Note. This act of the 19 G. 2. c. 34. is but temporary, and seems as to this part relating to the surrender upon proclamation to be expired; because the several acts which have continued the same from time to time do not continue the whole, but only so much thereof as relates to the *punishment* of the offenders, and not to the extraordinary method of apprehending or causing them to surrender. 4 *Blackst.* c. 12. f. 2.

23. If any person passing in a publick and avowed manner, with prohibited or uncustomed goods, and armed with pistols, guns, cutlasses, or other offensive weapons, shall molest or resist the officers of the customs or excise, endeavouring to seize the same, by beating, maiming, or wounding them, or any person assisting them; they may oppose force with force: And if any person so resisting the officers be wounded, maimed, or killed; such officers, or persons assisting them in their defence, may plead the general issue, and give this act and the special matter in evidence; and all justices of the peace, and others, before whom

Officers may oppose force with force.

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whom they shall be brought, shall admit them to bail.
9 G. 2. c. 35. *f.* 35.

Dangerously
hurting an offi-
cer, finable.

24. By the 13 & 14 C. 2. c. 11. Where any officer or officers of the customs shall be by any person armed with club or any manner of weapon, forcibly hindred, affronted, abused, beaten, or wounded, to the hazard of their lives, either on board any ship, or on the land or water in execution of their office; every person so abusing any such officer or his deputy, or such as shall act in his aid or assistance, shall by the next justice or other magistrate be committed to prison to the next quarter sessions; and the said sessions shall punish him by fine, not exceeding 100*l.* and the offender to remain in prison, till he be discharged by order of the exchequer both of the fine and of the imprisonment, or discover the person that set him on work. *f.* 6.

By eight or more,
transportation.

25. And by the 6 G. c. 21. If any officer of the customs be forcibly hindred, wounded, or beaten, in the due execution of his office, by any person armed with any manner of weapon, tumultuously assembled by day or night, to the number of eight or more; the offenders shall be transported for any term not exceeding seven years. *f.* 34, 35.

And if any offender shall in two months after his offence, and before conviction, discover his accomplices so as two be convicted, he shall have 40*l.* reward for each, and be acquitted. *f.* 36.

And if any other person shall in three months discover any offender so as he be convicted, he shall have 40*l.* over and above any other reward on account of the run goods. *f.* 37.

The same to be paid by the receiver general, or cashier of the customs, on producing the judge's certificate. *f.* 38.

Opposed on ship-
board, transpor-
tation.

26. And by the 9 G. 2. c. 35. more generally it is enacted, that if any officer of the customs or excise, being on board any ship, be forcibly hindred, wounded, or beaten, in execution of his office, either by day or night; the offender shall be transported for seven years. *f.* 28.

Hundred shall
answer damages.

27. And by the 19 G. 2. c. 34. *f.* 6. If any officer or other person employed in seizing any goods forfeited for being prohibited or uncustomed, or for not having paid duty, or by virtue of any law to prevent the exportation of goods, or in endeavouring to apprehend offenders against this act, shall be beaten or killed, or the goods seized be rescued; the hundred shall answer damages, and also pay 100*l.* to the executors or administrators of such person killed,

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killed, so as the sum for beating exceed not 40*l*, nor for the loss of goods 200*l*, to be recovered and levied as in cases of robbery by the 8 G. 2.

But no person shall recover damages for such beating or loss of goods, unless he give notice in four days to two inhabitants near, and in eight days make oath before a justice, whether he knew any of the persons concerned, and if he did, he shall be bound over to prosecute; and unless, besides the said notice and recognizance, he give such notice and enter into such recognizance as persons robbed by the 8 G. 2. are directed to give. *id.* *f.* 7.

And where the offender shall be convicted in six months, the hundred shall not be liable. *f.* 8.

Also the action against the hundred must be commenced within a year. *f.* 9.

28. If any action shall be brought for any thing done in pursuance of any act relating to the customs, excise, or salt duties; the defendant, if the plaintiff fails in his suit, shall have treble costs. 5 G. 3. c. 43. *f.* 47. Treble costs.

29. Offences relating to the customs or excise, made felony by any act, may be tried in any county; but the attainder shall work no corruption of blood, loss of dower or forfeiture of lands. 19 G. 2. c. 34. *f.* 5. Felonies in relation to the customs may be tried in any county.

30. By the 5 G. 3. c. 43. To prevent collusive agreements between the officers and importers; if any officer of the customs or excise, or other person authorised to make seizures, shall seize any goods as forfeited by this act, or any tea, foreign brandy, arrack, rum, strong waters, or spirits, as forfeited by the 9 G. 2. c. 35. on board any ship or vessel, and shall not seize and prosecute the ship or vessel; or if any such officer shall seize any goods whatsoever, which shall have been unshipped, landed, removed, or carried contrary to law, and shall not also seize and prosecute the boat, vessel, cart, horse, or other cattle, or carriage made use of in removing the same; and shall not discover to the commissioners of the customs or excise the persons concerned in unshipping or receiving such goods, so that they may be prosecuted: such officer shall, instead of the moiety, have only one third of the net produce arising by the sale of such goods, and the remaining two thirds shall be to the king. *f.* 39. Collusive seizures.

31. By the 5 G. 3. c. 39. Power is given to the officers of the customs and excise, to visit and search ships and vessels, in any harbour or other place belonging to the isle of *Man*, and seize contraband goods there, as they may do in Great Britain. *f.* 1. Isle of Man, as to customs.

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And no wrought silks, bengals and stuffs mixed with silk or herba, of the manufacture of *Persia*, *China* or *East India*, nor callicoës painted or stained in any of those places, nor any cambricks or *French* lawns, shall be exported to the said island; on pain of seizure by the officers of the customs and forfeiture thereof, and of the goods contained in the same package therewith. *f. 2.*

And the isle of *Man* shall be added to and included in the bond which is now by law required to be given, that such goods shall be duly exported, and not relanded in any part of Great Britain. *f. 3.*

And no foreign spirits shall be imported into the said island, but only such as shall be *bona fide* laden and shipped in Great Britain, and carried thither directly from thence; on pain of forfeiture of such goods, or the value thereof, together with the vessel and furniture. *f. 4.*

And no spirits shall be shipped in *America*, but on condition that the same shall not be landed in the said island. *f. 5.*

And no foreign spirits shall be exported from the said island, or carried coastwise, in any ship less than 100 tuns burden, nor in any cask under 60 gallons (except for the use of the seamen, not exceeding two gallons each); and no wine shall be there imported, or exported, or carried coastwise, in any ship less than 100 tuns burden, nor in any cask less than 25 gallons; on pain of forfeiture of the goods, together with the vessel and furniture. *f. 6.*

And vessels found hovering on the coast, or within three leagues thereof, having prohibited goods on board, (unless in case of necessity by distress of weather,) shall be forfeited, with the tackle and furniture, together with the said goods. *f. 7.*

And no spirits shall be imported from thence into Great Britain, upon any pretence whatsoever; and vessels coming from thence, with spirits (except for the use of the seamen, not exceeding two gallons each) or other prohibited goods on board, found hovering on the coasts of Great Britain or Ireland, or within three leagues thereof, (unless in case of necessity by distress of weather,) shall be forfeited, together with such goods. *f. 8.*

And the seizures may be brought into any port in Great Britain, Ireland, or the said island; and prosecuted there respectively, and disposed in all respects, as in case of seizures made in Great Britain. *f. 9.*

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By the 5 G. 3. c. 43. The inhabitants of the said island may import into Great Britain, bestials, or any goods of the produce and manufacture of the said island (except as above excepted, and except woollen manufactures, beer and ale); without paying any duty for the same, other than is paid for the like in Great Britain: Provided, that the person importing the same bring with him a certificate thereof from the proper officer there; and also make oath at the port of importation, that the goods are the same which were taken on board by virtue of the said certificate. *f. 11.*

But this shall not extend to give liberty to import into Great Britain from the said island any goods of the growth or produce of any foreign nation, which may be in part or fully manufactured in the said island; except linen manufactures made there of hemp or flax, not being the produce of the said island. *f. 12.*

And the bounties on exportation of British and Irish linens, shall be allowed on the like species of linen made in the isle of *Man*, imported into and exported from Great Britain. *f. 13.*

32. Whereas tobacco, rum, and other goods are shipped for exportation to the islands of *Faro* (being part of the dominions of the king of Denmark), with no other intent than fraudulently to reland the same; it is enacted, that no drawback or bounty shall be allowed for any goods exported to the said islands; nor shall any cocket or clearance be granted for exporting to the said islands any goods prohibited to be worn or used in Great Britain or Ireland. 5 G. 3. c. 43. *f. 31.*

And if any goods shall be entred for exportation, and shall be landed in the said island; the drawback thereon shall be forfeited; and the exporter, and master of the vessel, and every person concerned in exporting or landing the same, shall forfeit treble value; and the value also, with the tackle and furniture, shall be forfeited, and may be seized and prosecuted by any officer of the customs or excise; and the penalties and forfeitures may be recovered as any forfeiture incurred by any law of the revenue, and distributed half to the king (after deducting the charges of prosecution), and half to such officer who shall sue. *f. 32.*

And the said islands of *Faro* shall be added to and included in the oath, upon all debentures for goods exported, whereon the exporter is to swear, that such goods

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are not landed or intended to be landed in Great Britain or Ireland. *f.* 33.

II. Of the excise in general.

Head office, and commissioners.

1. One principal head officer of excise shall be kept in *London*, or within ten miles thereof, to which all other offices in the kingdom shall be subordinate and accountable; which said office shall be managed by such commissioners, as the king shall appoint. 12 *C. 2. c. 24. f.* 46. 5 *W. c. 20. f.* 16.

Subcommissioners, and other officers.

2. And all places within the bills of mortality shall be under the immediate care and management of the said head office; and such and so many subordinate commissioners, and subcommissioners, and other officers shall be appointed by the king in other places, as he shall think fit. 12 *C. 2. c. 24. f.* 48.

Office when to be kept open.

3. And the excise office in all places where it shall be appointed, shall be kept open from eight in the morning, till two in the afternoon. 23 *G. 2. c. 26. f.* 12.

Office in market towns.

4. And the commissioners or subcommissioners shall appoint under their hands and seals, such persons as they shall think needful in each market town, to be there upon every market day, in some known and publick place, for receiving entries and duties, and performing all other things touching the revenue of excise: And if such office shall not be so kept in each market town, the commissioners or others neglecting or refusing, shall for every market day forfeit 10*l.* And such person as shall come to such market town to make his entry or payment, and tender the same accordingly, and be able to prove such tender by oath of one witness, shall not be liable to any penalty for such weekly or monthly entries or payments, as should have been made or paid on such market day. 15 *C. 2. c. 11. f.* 10.

Collections, districts, and other divisions.

5. The kingdom of *England* and *Wales* (exclusive of the bills of mortality) is divided into 49 *collections*; some called by the names of particular counties; others by the names of great towns, where one county is divided into several collections, or where a collection comprehends the contiguous parts of several counties: Every collection is subdivided into *districts*, within each of which there is a *super-visor*; and each district is parcelled into *out rides* and *foot walks*, within each of which there is a *gager* or surveying officer. *Gilb. Exch. Append.*

6. The commissioners or subcommissioners, in their respective circuits and divisions, shall constitute under their hands and seals, such and so many gagers as they shall find needful. 12 C. 2. c. 24. s. 33.

In order to which, he who would be made a gager, must procure a certificate, that he is above 21, and under 30 years of age; that he understands the four first rules of arithmetick; that he is of the communion of the church of *England*; how he has been employed, or what business he hath followed; that he is not incumbered with debts; whether single or married; and if married, how many children he has, for if he has above two, he cannot (by the rules of the office) be admitted. *Gilb. Exch. App.*

He must also nominate two persons to be his sureties, and it must be certified that they are of sufficient ability; and that the said certificate is of his own hand writing: Such certificate, written by him, must be signed by the supervisor of excise where the party applying lives. *id.*

At the bottom of the certificate must be his affidavit, that neither he, nor any else to his knowledge, hath directly or indirectly, given or promised to give any treat, fee, gratuity, or reward, for his obtaining or endeavouring to obtain an order for his being instructed. *id.*

When an order for instruction is granted, it is directed to an experienced officer, who receives such person as his pupil; and the like books as officers have, being delivered to such pupil, he goes with and attends the officer who instructs him, and takes surveys, and in his own books makes the like entries as if he was an officer, until the instructor certifies that he is fully instructed. *id.*

After he is thus certified for, and until he is employed, he is called an *expectant*, being to wait till a vacancy happens. *id.*

7. No person shall be capable of intermeddling with any office relating to the excise, until he shall before two justices in the county where his employment shall be, or before a baron of the exchequer, take the oaths of allegiance and supremacy, together with this oath following; Officer's oath.

You shall swear to execute the office of ——— truly and faithfully, without favour or affection, and shall from time to time true account make and deliver to such person or persons as his majesty shall appoint to receive the same, and shall take no fee or reward for the execution of the said office, from any other person than from his majesty, or those whom his majesty shall appoint in that behalf. 12 C. 2. c. 24. s. 47.

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And the justices shall certify the taking of such oath, to the next quarter sessions, there to be recorded. *f. 48.*

And the officer shall also enter a certificate thereof with the auditor of the excise: And if any such person shall act before he hath taken the said oaths, and entered his certificate with the auditor aforesaid, he shall forfeit 50l a month. 15 C. 2. c. 11. *f. 27.*

And he shall also, within six months after his admission to the office, take the oaths and subscribe the declaration against transubstantiation, at the quarter-sessions; in like manner as other persons admitted to offices.

Officers general
duty.

8. The business of the *supervisor* is to be continually surveying the houses and places of the persons within his district liable to duties; and to observe and see whether the officers duly make their surveys, and make due entries thereof in their books and in their specimen papers; and every supervisor is in his own book to enter what himself does, each day and part thereof; and also set down the behaviour good or bad, the diligence or negligence, of the several officers of his district; and at the end of every six weeks, to draw out a diary of every day's business, and of the remarks made each day of the several officers in his district, and to transmit such diary at the end of every six weeks to the chief officer. *Gilb. Exch. Append.*

Each commissioner takes and peruses a proportion of these diaries, and when he meets with any remarkable complaint against any officer, he communicates it to the rest; who thereupon come to an agreement, either to *admonish, reprimand, reduce or discharge*. For small faults, officers are admonished; for great ones, reprimanded; for greater, reduced; but for the greatest, they are discharged. The commissioner who peruses the diary, writes in the margin, admonish, reprimand, or as the case is. *id.*

These diaries, after having been thus written upon, are delivered to the clerk of the diaries, who in a book, called the reprimand book, places the admonitions, reprimands, and the like, to each officer's account, and writes every offender word thereof. Which reprimand book is resorted to, upon discovering new faults; and if it is there found, that the officer has before been admonished and reprimanded so often, that there are no hopes of his amending, he is then discharged. The said book is likewise resorted to, when application is made for advancing or preferring an officer into a better post. Frequent admonitions or reprimands are a bar to preferment, unless they are of old standing; but if for three years last he stands pretty clear of admonitions and reprimands, those of elder date are not much regarded. *id.*

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The collector's business is, every six weeks to go his rounds; and in the intervals of rounds, he is to be assisting in prosecuting offenders before the justices; he is also to peruse the supervisor's diaries, and where he finds an officer complained of, is to examine him and the supervisor, and having heard both, is in the margin to write his opinion of each fact; he is also to have an eye how the supervisors and officers of his collection perform their duties; and from the vouchers he transcribes into his book the charge on each particular person in his collection. *id.*

For faults, gagers are reduced, either to be only assistants, or from foot walks to out rides; supervisors are reduced to be again only gagers; and collectors are reduced to be supervisors. *id.*

In some instances, discharged officers, after having for a competent time been thereby kept out of pay, are again restored; but if twice discharged, are never again restored, unless one of the discharges appears to have been occasioned by a misrepresentation of the case. *id.*

9. In the act of the 24 G. 2. c. 40. There is a general clause, which has a controlling influence on all that hereafter follows in this large title; which is this: *All fines, penalties, and forfeitures, imposed by this or any other act relating to the duties of excise, or other duties under the management of the commissioners of excise, shall be sued for, levied, recovered, or mitigated by such ways and means, as any fine, penalty, or forfeiture is or may be recovered or mitigated by any law or laws of excise, or in the courts at Westminster, and shall be half to the king, and half to him that shall inform or sue.* f. 33. Penalties by the excise laws.

10. That is to say, *If it is within the limits of the chief office in London, the offences shall be determined by the commissioners (or any three of them, 1 G. 2. st. 2. c. 16. f. 4, 5.) or, in case of appeals, by the commissioners of appeals: in all other places, they shall be heard and determined by any two or more justices of the peace, residing near to the place where such forfeitures shall be made, or offence committed: And in case of neglect or refusal of such justices by the space of 14 days next after complaint made, and notice thereof given to the offender; then the subcommissioners may hear and determine the same; And if the party find himself aggrieved by the judgment given by the said subcommissioners, he may appeal to the next quarter sessions, whose judgment therein shall be final. Which said commissioners for appeals, and chief commissioners for excise, and all justices of the peace, and subcommissioners aforesaid, are required upon any complaint or information exhibited* By two justices.

and brought, of any such forfeiture made or offence committed, to summon the party accused, and upon his appearance or contempt to proceed to the examination of the fact, and on due proof made thereof, either by the voluntary confession of the party, or by the oath of one credible witness, to give judgment or sentence, and to issue warrants under their hands, for levying the same on the goods and chattels of the offender, and to cause sale to be made thereof, if not redeemed in 14 days; and for want of sufficient distress, to imprison the party offending till satisfaction be made. 12 C. 2. c. 24. s. 45.

Residing near] Mr. Shaw, who seems to have taken some pains on this article (after whom Mr. Barlow hath copied without owning it) saith hereupon, that where the next justices are impowered to proceed in any matter, they and no other ought in such case to act; but where it is only directed, that the justices residing near shall do such a thing, those words are not restrictive, but only directory, and any justices, altho' not the next justices, may proceed therein. Shaw. Exc.

But where the act says, that any two justices residing near to the place where the forfeiture shall be made, or the offence committed, shall hear and determine the matter, it doth not intend that the justices of a county at large dwelling near to a town corporate, which hath justices of its own, and an exclusive charter, shall have power to intermeddle with regard to offences committed within such town corporate; but only to vest the jurisdiction in justices of counties, cities, and places, with respect to their local jurisdictions within such places. T. 14 G. 2. Talbot and Hubble. Str. 1154.

Upon any complaint or information exhibited] By these words it is not necessary that the information be exhibited in writing; but if it is a verbal information, the justices ought to make a record thereof, and of the time and place, when and where exhibited, which must be expressed in the present, and not in the time past: But to save the justices that trouble, it is usual for the informer to prepare his information in writing; and by way of preface thereto, to make a memorandum of the time and place of the laying such information, leaving therein blanks for the names of the justices, and the day and month and year and place when and where laid; and when those blank are filled up by direction or consent of the justices, then it becomes a record made by them. The mentioning the place where the

information is laid, is, that it may appear that the prosecution was in the proper county; and therefore though it may happen, that for laying the information, the prosecutor may be obliged to attend one justice in one town, and another justice in another town, it must not be mentioned, that the information was laid at both towns, for that would be absurd; but in such cases it is usual to express that the information is laid at the town where the hearing is intended to be. *Shaw. Exc.*

Proceed to the examination of the fact] And by the 9 G. 2. c. 35. it is enacted, that in trials of seizures, the justices shall proceed to the merits of the cause, without inquiring into the form or manner of seizure. *f. 34.*

Give judgment] Altho' it hath been said, that whatever is recorded by the justices or their order, ought to be expressed in words of the present time and tense; yet that doth not make it necessary, nor is it indeed practicable, that all that is to be so entered should actually be entered at the instant of time when such judgment is given; for such entering the whole at that time would hinder the dispatch of business, and delay the hearing of causes, and therefore may be done at any convenient time after; which if it be agreeable with, and according to such short minutes or notes as are then taken by such justices, it will be as authentick as if it had been entered at the instant of time in which such order was made, or judgment was given. *Shaw Exc.*

And to issue warrants under their hands] Altho' it is here only directed, that the warrant shall be under the hands of the justices; yet since it is generally implied in all warrants, that they are both under hand and seal, it is safe at least, if not necessary, that this warrant also amongst the rest, be both signed and sealed.

For levying the same on the goods and chattels of the offender] And in case where the offender shall remove out of the jurisdiction, it is enacted by the 18 G. 2. c. 26. f. 13. and 5 G. 3. c. 43. f. 26. that the commissioners and justices respectively, within whose jurisdiction any person charged by any act concerning the duties of excise, or any other duties under the management of the commissioners of excise, or who hath committed any offence against any of the said acts, shall be found, may summon, hear, adjudge, and determine, and issue any process or warrant, in the same manner as before they might have done in case

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case of such offences committed within their jurisdiction ; and if they shall, upon any judgment given by them, issue a warrant of distress, and the person authorized to execute the warrant shall make a return thereto that no sufficient distress can be found, it shall be lawful for the said commissioners and justices respectively, within whose jurisdiction the party shall at any time be found, against whom such warrant shall have been issued, upon producing to them such warrant, and return thereof, to commit such offender to the next county gaol till satisfaction be made.

And to cause sale to be made thereof if not redeemed in 14 days] But by the 27 G. 2. c. 20. the justices may not order the distress to be detained more than eight days, nor less than four.

For want of sufficient distress] Mr. Shaw and Mr. Barlow are of opinion, that where there are some goods, but not sufficient for satisfying the judgment, yet those goods may be applied for that purpose so far as they shall extend, and the defendant shall be imprisoned for the residue ; which may seem hard sometimes, when the defendant shall perhaps satisfy nearly the whole sum, and moreover be imprisoned as much as if he had paid nothing ; and it hath been adjudged in other cases, that a man shall not first pay part, and then be imprisoned for the residue, but shall either pay the whole, or be imprisoned for the whole : but perhaps the distinction may be this ; where there is a limited time of imprisonment, as for instance, three months, there the defendant shall not pay part, and then be imprisoned the whole three months, which would be to punish him both ways ; but where the imprisonment is till the penalty shall be paid, there the payment of the penalty is the thing chiefly regarded, and the imprisonment is not intended as a punishment, but as a mean to compel the payment of the penalty, and if part of it is paid already, the enlargement may come the sooner, by payment of the residue.

Imprison the party till satisfaction be made] But before any warrant can be made to arrest and imprison the person of the defendant, there must be first a warrant to seize the utensils in custody of such offender, and the offender's goods ; and that warrant must be returned : all which must be done, before any warrant can be regularly made, to arrest and imprison the defendant's person. Which method ought to be observed, tho' perhaps it may be well known by, or sufficiently proved before the justices, that all the utensils and all the defendant's goods are carried off ; for the law being in all cases very tender of depriving men of their

their liberty, it is necessary that all possible means should be used to levy the money on such goods, before the person of the defendant be imprisoned. But if a warrant to seize the utensils and the goods, be made and delivered to an officer to be executed; and if such officer, having made diligent search, cannot find any such, then a warrant may be made to arrest and imprison the person of the defendant. But then there ought to be a duplicate made of such warrant; because the keeper of the prison cannot regularly receive the offender without a warrant, and the officer ought also to have and keep a warrant for his own justification. *Shaw. Exc.*

11. By the 7 & 8 *W. c. 30.* The commissioners and justices may summon witnesses, to appear before them at a certain day, time, and place, to be inserted in such summons, and to give evidence; and in case of neglect or refusal to appear, or if upon appearance any shall refuse to give evidence, he shall forfeit 10 *l. s. 24.* Summoning witnesses.

And a summons left at the house or usual place of residence, or with the wife, child or menial servant of the person accused, shall be as effectual, as if delivered to the person himself. *32 G. 2. c. 17. s. 1.*

And in all cases relating to the excise, or to any of the duties under the management of the commissioners of excise (except where particular provisions are made for summoning offenders, or for condemning of seizures made from persons unknown); the leaving such summons at the house, work-house, shop, cellar, vault, or usual place of residence of such person, directed to him by his right or assumed name, shall be as effectual as if delivered to him in person, and as if directed to him by his proper name. *s. 2.*

12. If upon trial, any question shall arise, concerning the keeping of any office of excise, or concerning any person's being an officer; proof shall be admitted of the actual keeping of such office, or of such person's actually exercising such office, without proving or producing the commission. *6 G. c. 21. s. 24. 11 G. c. 30. s. 32.* Officer on trial need not produce his commission.

13. If on trial any dispute shall arise, whether the excise or other inland duties have been paid for any foreign goods seized; the proof shall lie on the owner, and not on the officer. *12 G. c. 28. s. 8.* Proof to lie on the owner.

14. One or more justices shall have power to administer an oath to any person skilled in the value of goods, vessels, or carriages, mentioned to have been seized in any information exhibited before the justices, to view the same, and make return of the species, quantity and value; and after
condem-

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condemnation, the said goods shall be sold where the commissioners shall think proper. 12 G. c. 28. f. 16.

Mitigation.

15. *The justices, commissioners, or subcommissioners, respectively, where they shall see cause, may mitigate, compound or lessen the forfeiture, penalty or fine; so as the same be not made less than double the value of the duty of excise which ought to have been paid, besides the reasonable costs and charges of such officers, or others as were employed therein, to be to them allowed by the said justices.* 12 C. 2. c. 24. f. 46.

Mitigate] But it is not necessary in the mitigation, to mention or distinguish so much for the offence, and so much for the charges; but after the justices have agreed what sums to allow for the charges, the best way will be to add those two sums together, and make their mitigation to such sum, as both when added together do amount unto: as suppose the justices do intend, that the defendant shall pay 10 l for the offence, and 40 s for the charges, the best way will be to make their mitigation to 12 l, without particularly mentioning that 10 l thereof is for the offence, and that the 40 s is for the charges; for in all cases it is wrong to insert in judgments more words or particulars than are necessary; and it is more particularly wrong in these cases, because the mentioning such unnecessary particulars may give a handle for cavils and disputes. *Shaw. Exc.*

Costs and charges] Generally the law doth not allow any costs or charges to be recovered on any penal law; and therefore to intitle the prosecutor to costs, over and above the penalty, expres words for that purpose are necessary in an act of parliament. *Shaw. Exc.* But by the 27 G. 2. c. 20. the constable out of the money arising from the sale of the distress, may detain his reasonable charges of taking, keeping, and selling the same.

Appeal.

16. There is no appeal directed in the said statute of 12 C. 2. from judgments given by the justices of the peace; for whereas it is enacted, in the said statutes, that *if the party find himself aggrieved by the judgment given by the subcommissioners, he may appeal to the next quarter sessions*, these words, not being general, or such as may be applied equally, as well to the judgments given by the justices, as to judgments given by subcommissioners, they must be understood as limited and restrained to such judgments only as are given by subcommissioners, in whom the parliament (it seems) did not so intirely confide as in the justices, but have made the aforementioned distinction between the judgment

ment of the one and of the other; which must be observed and pursued; and therefore, generally, there lies no appeal to the quarter sessions from the judgment given by the justices, in matters relating to the excise. *Shaw. Exc.*

Nevertheless in some particular instances, such power is given by subsequent statutes; which will be mentioned under the special heads in this title hereafter following.

By the 15 C. 2. c. 11. No appeal in any cause of excise shall be admitted, till the appellant hath deposited the single duty with the commissioners or subcommissioners, and given security to the commissioners of appeal, or justices of the peace, where the cause is to be finally adjudged, for such forfeiture as was adjudged against him; and if upon appeal the judgment be reversed, they shall restore the duty so deposited, or so much thereof as shall be adjudged on the appeal, and the party originally prosecuting shall pay double costs; but if the judgment be affirmed the party appealing shall pay the like costs to the commissioners. *f. 19.*

And by the same statute, all differences and appeals about the excise, shall be heard in the proper county, and not elsewhere. *f. 22.*

And by the same statute, appeals within *London*, and the limits thereof, shall be within two months after judgment, and notice given or left at the dwelling-house of the party; in all other places, in four months, and not otherwise. *f. 26.*

17. It is generally provided by divers statutes, that no *Certiorari*. *certiorari* shall be allowed to supersede the justices proceedings. 12 C. 2. c. 24. *f. 50.* 22 & 23. C. 2. c. 5. *f. 14.* 6 G. c. 21. *f. 22.*

18. Persons sued for any thing done on any act relating to the excise, or other duties under the management of the commissioners of excise, may plead the general issue; and have treble costs. 18 G. 2. c. 26. *f. 15.* Treble costs.

19. Offences relating to the excise made felony by any act, may be tried in any county; but the attainder shall work no corruption of blood, or forfeiture of lands. 19 Felonies relating to the excise where to be tried. *G. 2. c. 34. f. 5.*

20. Any alehousekeeper harbouring an absconded person, against whom a process of arrest hath issued, for any offence against the laws of excise or of the customs, after six days notice of such absconding in two successive gazettes, and writing fixed on the door of the parish church where he last dwelt, shall forfeit 100*l*, and have no licence for the future. 9 G. 2. c. 35. *f. 30, 31.* Alehouse keepers harbouring offenders.

Landing foreign
exciseable liquors
before duty paid.

21. No foreign liquors, for which excise ought to be paid shall be landed, before entry made with the officer or collector of excise, or before the excise shall be paid; and every warrant from any officer of the customs, for landing such foreign liquors, shall be signed by the officer or collector of excise, in the port; on pain that the liquors landed otherwise, or the value thereof, shall be forfeited, to be recovered of the importer or proprietor. 22 & 23 C. 2. c. 5. f. 9.

Exciseable liquors
carried coastwise.

22. No person bringing any exciseable liquors (except beer, ale, cyder, perry, and metheglin) into any place by coast coquet, transire, or certificate, nor any person to whom the same shall be consigned, shall land the same, without being entred with the officer of excise where landed; on pain of double value. 15 C. 2. c. 11. f. 18.

Concealing ex-
ciseable goods.

23. If any person shall conceal, or suffer to be concealed, any goods liable to the duties of excise, and inland duties; he shall (whether he claims any interest in them or not) forfeit the same, and treble value. 11 G. c. 30. f. 16.

Constable to be
assisting.

24. If on request made by any officer of excise, to a constable to go along with him, and to be present at the doing of any thing, at the doing whereof his presence shall be necessary by any statute, he shall neglect or refuse or shall not go along with him, and be present at the doing thereof; he shall forfeit 20 l. 11 G. c. 30. f. 31.

Obstructing of-
ficer.

25. If any person shall oppose, molest, hinder, or obstruct any officer of excise, in the due execution of the powers given him by any act relating to the duties of excise; he shall forfeit 10 l. 6 G. c. 21. f. 7.

And actions of assault upon any officer of excise, may be tried in any county. 9 G. 2. c. 35. f. 26.

Further penalties for obstructing, wounding, or killing officers, in the case of run goods, have been inserted before, in treating of the customs.

Officer not to be
a dealer.

26. If any officer of the excise or customs shall deal in coffee, tea, brandy, or other exciseable liquors; he shall be incapable to hold any office in the revenue, and forfeit 50 l. 12 G. c. 28. f. 7.

Officer taking a
bribe

27. No sworn gager, or other officer, shall take any bribe, for any matter relating to the excise; on pain of 10 l. 15 C. 2. c. 11. f. 16.

And a further penalty upon such officer, is inflicted, in divers instances hereafter mentioned.

And by the 11 G. c. 30. If any person liable to the duties of excise, or any other duties under the management of the commissioners of excise, shall give or offer to any officer

Excise. (*Ale, &c.*)

31

officer of the said duties any bribe, gratuity, or reward, in order to induce him to omit his duty, or to do contrary to it; he shall forfeit 500 l. *f. 40.*

28. No collector, supervisor, gager, or other person concerned in charging, collecting, levying, or managing the duties of excise, or any part thereof, shall by word, message, or writing, or in any other manner, endeavour to persuade any elector to give, or dissuade any elector from giving, his vote for the choice of a member of parliament; on pain of 100 l, half to the poor, and half to him who shall sue in the courts at *Westminster*; and moreover he shall be incapable to hold any office of trust under the king. *5 W. c. 20. f. 48.*

Officer meddling in election.

III. Of the several goods in particular, under the management of the commissioners of the customs and excise: *viz.*

Ale, beer, cyder, perry, mum, metheglin, mead, sweets, verjuice, and vinegar; candles; coaches; coffee, tea, and chocolate; glass; hops; leather; linen cloth, silks, and cottons; malt; paper; plate; salt; soap; spirituous liquors; starch and hair powder; wire.

I. *Ale, beer, cyder, perry, mum, metheglin, mead, sweets, verjuice, vinegar.*

1. By the several acts relating to that purpose, there shall be paid by the importer before landing, for every barrel of beer or ale imported, in the whole the sum of 18 s. Duty on ale and beer imported.

2. By the several acts there shall be paid in the whole, for every barrel of beer or ale above 6 s a barrel, brewed by the common brewer, or any other person who shall sell or tap out beer or ale, the sum of 8 s; and for every barrel of 6 s a barrel or under, the sum of 1 s 4 d. On home ale and beer.

3. For every tun of cyder or perry imported shall be paid 22 l 10 s. And if they are imported by foreigners they shall pay 30 s more. Duty on cyder and perry imported.

4. By

Duty on home
cyder and perry.

4. By six several acts, for every hogthead of *cyder* and *perry* made in Great Britain, and sold by retail, there shall be paid by the retailer the sum of 6 s 8 d. And by the 12 Ann. §. 1. c. 2. 4 s more to be paid by the first buyer or retailer. And by the 1 G. 3. c. 3. 4 s more, over and above all other duties payable for cyder and perry sold by retail. And by the 6 G. 3. c. 14. 6 s. more.

And for every hogthead which shall be sent or consigned to any factor or agent, who shall receive the same to sell or dispose of, 16 s 8 d, to be paid by such factor or agent. 6 G. 3. c. 14. §. 4.

And every person who shall receive into his custody or possession any cyder or perry, to be by him sold or disposed of, shall be deemed to be a factor or agent; unless he make proof, that such cyder or perry was made from fruit of his own growth, and not from bought fruit; or unless it appear by certificate of the officer of excise accompanying the said cyder or perry, that the duties have been charged upon the same. §. 5.

Provided, that if any cyder or perry shall be received by any factor or agent, dealer or retailer, for which it shall appear by certificate that the duties have been charged; such person shall not be charged with the payment of such duties charged as aforesaid, on receiving such cyder or perry into his stock, or on the decrease thereof. §. 6.

Provided also, that if any factor or agent shall (during the continuance of the present malt act) be charged with and pay the duty of 4 s a hogthead chargeable on him as the receiver thereof; he shall stand discharged of 4 s, part of the said 16 s 8 d. §. 7.

And every such factor or agent, taking any cyder or perry into his possession, shall, three days before he shall begin to dispose of the same, make entry in writing at the next office of excise, of his name, at the place where the cyder or perry is to be kept: And if he shall make use of any warehouse or other place, without having made such entry; he shall forfeit 50 l. And every such factor or agent shall be liable to all the regulations, which any dealer in or retailer of cyder and perry is liable to by this or any other act now in force, for managing the duties on cyder and perry. §. 9.

And for every hogthead of cyder and perry, which shall be made and sold in Great Britain, by any dealer in or retailer thereof, from fruit of his own growth shall be paid a duty of 6 s by such dealer or retailer. §. 10.

And

And every person who shall buy any cyder or perry, or any fruit to make into cyder or perry, and shall sell any cyder or perry so bought or made, by the hoghead or any greater or lesser measure; or shall sell any cyder or perry in less quantity than 20 gallons at a time, whether the same be made from fruit of his own growth or from bought fruit; shall be deemed a dealer in and retailer of cyder or perry. *f. 11.*

Provided nevertheless, that when such dealer in or retailer of cyder or perry made from fruit of his own growth, shall sell the same to any other dealer or retailer, who shall purchase the same to sell again; such purchaser, receiving the same with a proper certificate of the duties having been charged, shall not be charged with the said additional duty of 6s a hoghead imposed by this act on cyder and perry sold by retail: And if the cyder or perry, made by such dealer or retailer from fruit of his own growth, shall be sold by the maker thereof in less quantity than 20 gallons at a time, such dealer or retailer shall not be charged with the said additional duty. *f. 12.*

And every such dealer in and retailer of cyder or perry made from fruit of his own growth, shall be liable to all the regulations which any dealer in or retailer of cyder or perry is liable to by this or any other act now in force for managing the duties on cyder or perry. *f. 13.*

And for preventing disputes that may arise touching charging the duties on cyder and perry; it is declared, that cyder or perry made in Great Britain, in no case whatsoever shall pay or be chargeable with more than 16s 8d a hoghead. *f. 14. (10 G. 3. c. 2. f. 22.)*

And to prevent frauds being committed by dealers and retailers, or factors and agents, in ordering quantities to be removed immediately from the maker to the persons to whom they are consigned by such dealer and retailers, factors and agents, without coming into the possession of such dealers, retailers, factors, or agents, whereby the duties are prevented from being charged; it is enacted, that if any such dealer or retailer, factor or agent, shall cause such cyder or perry so to be removed from the maker to the person contracting for the same, without the duties having been first charged, and without a certificate from the officer of excise (which he shall give without fee) signifying the quantity, or number of casks or other package, and that the duties have been charged, he shall forfeit 50l. *f. 15.*

Provided always, that the said duties shall be drawn back on distillation into low wines and spirits: And if

such cyder or perry, having paid the duties, shall afterwards, by being unfit for sale as cyder or perry, be charged with the duties on vinegar; three commissioners of excise, or two justices, on proof thereof, shall discharge the duties thereon imposed by this act. *f. 16.*

Duty on mum. 5. For every barrel of mum imported shall be paid the sum of 25 *s.* And moreover by the 12 *Ann. st. 1. c. 2.* and 13 *G. c. 7.* for every barrel of mum made or imported, over and above all other duties, shall be paid by the maker and importer, 10 *s.*

Duty on metheglin and mead. 6. For every gallon of metheglin or mead, sold by retail or otherwise, shall be paid by the maker 11½ *d.*

Duty on sweets. 7. For every barrel of liquor made for sale, by infusion, fermentation, or otherwise, from fruit or sugar, mixed or unmixed with other ingredients, commonly called sweets or made wines, shall be paid 12 *s.* 10 *G. 2. c. 17. f. 2.* But this shall not extend to wines made of *British grapes. f. 7.*

Duty on verjuice. 8. Verjuice made for sale, shall pay as cyder and perry. 7 & 8 *W. c. 30. f. 28.*

Duty on vinegar imported. 9. For every tun of vinegar imported shall be paid 13 *l.* and if imported by strangers 30 *s.* more. And by the 18 *G. 2. c. 9.* and 3 *G. 3. c. 12.* 16 *l.* more for *French* vinegar, and other vinegar 8 *l.*

Duty on home vinegar. 10. For every barrel (at 34 gallons to the barrel) of vinegar, vinegar beer, or liquors preparing for vinegar, made for sale, shall be paid 11 *s.* 1 *d.*

Note; This shall extend to vinegar made for pickles, but not to vinegar for making white lead. 8 *Ann. c. 7. f. 4, 5.*

And all stale beer, returns of beer or ale, cyder, verjuice, or any other liquors proper to be made into vinegar, which shall be found in the possession of any common vinegar maker, (except such as are to be drank in his family, and which shall be kept separate for that purpose) shall be deemed vinegar, or liquors preparing for vinegar. 10 & 11 *W. c. 21. f. 11.*

Notice and entry of vessels and places for making the same. 11. By the 15 *C. 2. c. 11.* No common brewer, inn-keeper, victualler, or other retailer of beer or ale, shall without first giving notice at the next office of excise, or to the commissioners or subcommissioners, or one of them, erect, alter, or enlarge, any tun, fat, back, cooler, or copper, and make use thereof for brewing or making any beer, ale, or worts; on pain of 50 *l.* And every other person, in whole occupation any house, outhouse, or other place shall be, where any such private tun, fat, back, cooler, or copper shall be found, shall also forfeit 50 *l.*

50 l. And the same, together with all beer, ale, or worts therein, shall be taken up, seized, and forfeited. *f. 1.*

And by 5 G. 3. c. 43. If any common brewer shall alter the position of any tun, batch, float, cooler, or copper, after the same hath been set up and fixed, without first giving notice thereof in writing to the officer; or shall place any boards, stone, wood, or any other materials at the dipping place; or shall by any other means prevent or hinder the gager from taking true dips and gages of beer, ale, or worts; he shall forfeit 20 l. *f. 25.*

And the officer of excise in the day time, and in the presence of a constable, where he shall have just suspicion, that any private back, tun or other concealed vessel or receptacle are used by any brewer, maker, or retailer of exciseable liquors, on request first made, and cause declared, may break open the door, or any part of his brewhouse, warehouse, or other room in his possession, and enter, and break up the ground in such house or room, or ground near adjoining in his possession, to search for such back, tun, or other vessel, or any pipe or conveyance leading thereto; and if he finds any private pipe or other conveyance, he may search and follow the same, and if it shall lead into any ground, house, or place in the possession of any other person, on like request, and with a constable, he may enter the same, and break open the ground, or any part of the house if occasion shall be, to follow such private pipe, in order to find out such concealed back, tun, or vessel, making good the ground or house so broken up, or giving reasonable satisfaction to the owner: And if any person shall oppose such officer, he shall forfeit 20 l. 7 & 8 W. c. 30. *f. 27.*

And if any *vinegar maker* shall without giving such notice, use any storehouse, warehouse, cellar, or other place for making or keeping any vinegar, vinegar beer, or liquors preparing for vinegar; he shall forfeit 50 l. 10 & 11 W. c. 21. *f. 14.*

In like manner, every dealer in and retailer of *cyder* and *perry*, and other person receiving into his custody either of them for sale, and every person who shall buy any fruit to make into cyder or perry for sale, shall make entry of his storehouses, cellars, and other places, at the excise office within the district; on pain of 50 l. 1 G. 3. c. 3. *f. 21.*

So also, the maker of *sweets* for sale shall first give such notice, of his name and place of abode, and of the rooms and places he intends to use for making or keeping of sweets or made wines; on pain of 20 l. 10 G. 2.

c. 17. *f.* 4. And any person who shall sell or use any the materials abovementioned, in making of wines, and in whose custody above two gallons shall be found, shall be deemed a maker of sweets for sale. 10 & 11 *W. c.* 21. *f.* 5.

Private pipes.

12. No common brewer shall keep any pipe or stop cock under ground, or any other private conveyance, by which any beer, ale, or worts may be conveyed from one tun or brewing vessel to another, or into any other place, nor shall have any hole in any tun, batch, or float, by which any beer, ale, or worts may conveyed into or out of the same; on pain of 100*l.* 8 & 9 *W. c.* 19. *f.* 4.

And the excise officer in the day time, and in presence of a constable, on request made, and cause declared, may break up the ground in any common brewhouse, or the ground near adjoining, or any wall, partition, or other place, to search for any such private pipe, or other conveyance, and on finding may follow the same, and break up the ground, house, wall, partition, or other place, thro' or into which the same shall lead, and break up or cut such pipe or other conveyance, and may turn any cock to try whether it can convey as aforesaid. *f.* 5.

And if on search no such pipe or other private conveyance shall be found, the officer shall make good the ground, wall or other place so broken up, or make satisfaction to the owner: And if any person shall oppose such officer, he shall forfeit 50*l.* *f.* 6.

But any common brewer may use any pipes, stop-cocks, or other conveyances above ground, which are publick and in open view, for letting his worts out of his copper into his publick backs or coolers; and out of the same into his tuns, batches, or floats; or out of the tun into his cask. *f.* 7.

Private cellar.

13. No common brewer, innkeeper, victualler, or other retailer of beer or ale, shall use or keep any private storehouse, cellar, or other place for laying of any beer or ale, or worts, in cask; on pain of 50*l.*: and every other person in whose occupation any such place shall be, shall also forfeit 50*l.* 15 *C. 2. c.* 11. *f.* 1. 1 *W. fl.* 1. *c.* 24. *f.* 11.

Private person suffering liquors to be brewed in his house.

14. If any person inhabiting in a market town, city or town corporate, or parts adjoining to a city or town corporate, where there is a common brewhouse, having and lawfully using any private brewing vessels for making beer or ale to be consumed in his own private family, shall permit any beer, ale, or worts to be brewed in his house,

house, or other place thereunto adjoining, other than for his own family, servants, labourers, or to others by way of charity, hospitality, or free gift; or shall lend out any of his brewing vessels, other than which are moveable and unfixt, he shall forfeit 50 l. 22 & 23 C. 2.

c. 5. f. 10.

15. The gager shall at all times, as well by night as by day (and if by night, then in presence of a constable) be permitted upon his request to enter the brewhouse, and all other houses and places belonging to or used by any person brewing of beer, or by any retailer of beer, ale, wort, perry, cyder, or metheglin; and to gage all coppers, fats, and vessels in the same; and to take an account of all such liquors brewed or made therein; and thereof shall make return in writing to the commissioners, leaving a true copy of such return under his hand with such brewer, maker, or retailer; which return shall be a charge upon such brewers, makers or retailers. 12 C. 2.

c. 24. f. 33.

And if any brewer shall bribe the gager to make a false return, he shall forfeit 10 l.; and the officer taking the bribe shall also forfeit 10 l. 15 C. 2. c. 11. f. 16.

And if any such common brewer, maker, or retailer shall refuse to permit such gager to enter his brewhouse or other place aforesaid, or to gage or take account of his vessels or liquor aforesaid, he shall be forthwith forbidden by the gager to sell, carry out, or deliver to any of his customers, any beer, ale, or other the liquors aforesaid; and if he shall after such warning given, sell, carry, or deliver out the same, or any part thereof, not having paid the duty of excise, he shall besides the forfeiture of double value, forfeit also the sum of 10 l. 12 C. 2. c. 24.

f. 33.

And by the 7 & 8 W. c. 30. If any common brewer, innkeeper or victualler, shall on request or demand made by the gager in the day time, or in the night in presence of a constable, refuse to permit him to come into his house, brewhouse, or other place used by him; or being entred, shall refuse him to stay in the brewhouse, whilst his guile is brewing, and quietly gage and take an account of the several worts as they are brewed off, and let into his backs and tuns, and to see their strong and small drink cleansed and carried out without mixture, and to take an account of the goods in the mesh tun, or the quantity of malt from which such worts are made; he shall forfeit 20 l. and the prosecutor shall not be obliged

to prove that the party carried out any part of such guile before he paid the duties. *f. 22.*

And by the said act, if any maker of *vinegar, cyder, metheglin, mead, or sweets* for sale, shall conceal any vinegar, or liquor prepared for vinegar, or any cyder, metheglin, mead, or sweets from the view of the gager, he shall for every barrel of vinegar or liquor prepared for vinegar, or sweets, forfeit 40s, for every hoghead of cyder 40s, and for every gallon of metheglin or mead 5s. *f. 16.*

And if any maker or retailer of vinegar, or other the liquors last mentioned, shall on request or demand made by the gager in the day time, or if by night in the presence of a constable, refuse to permit him to enter his house, storehouse, or other place used by him, and to take account of the said liquors; he shall forfeit 15l. *f. 17.*

And by the 6 G. 3. c. 14. If any person shall obstruct the excise officer in execution of the powers of that act, in relation to the duties on cyder and perry; he shall forfeit 40l. *f. 17.*

Indifferent gagers may be sworn.

16. As often as there shall be occasion, two able artists shall be appointed, one of them by the commissioners or subcommissioners, and the other by the brewers of any city or place; who shall be sworn before a justice, to take and compute the just contents and gage of all coppers, fats, tuns, backs, and coolers, and all other brewing vessels of that nature, and to deliver under their hands one copy of the contents to the commissioners and subcommissioners, and another to each respective brewer. 15 C. 2. c. 11. *f. 7.*

Brewer to declare how much he intends to make.

17. Every common brewer who shall make any guile of beer or ale, shall declare to the gager, how much strong beer or ale he intends to make of such guile, and how much small, before any part of the guile is cleansed or removed out of his tuns; and if such brewer or his servants shall refuse to make such declaration, the gager shall return the whole as strong, and the brewer shall also forfeit for every barrel in such guile 20s. And if such brewer or his servants after such declaration shall make any increase of the strong beer or ale, or if the gager shall find any beer, ale, or worts of the same guile laid off, over and above the quantity so declared; he shall forfeit for every barrel so increased, laid off, or found over and above such quantity 5l, and the servant assisting therein 20s, and in default of payment be imprisoned

three

three months: And if on an information against the brewer for the said penalties, it appear by his evidence, that the strong beer or ale so declared, was increased by adding to or mixing with it any beer or ale that was left in the brewhouse of a former guile, he shall nevertheless incur the penalties, except it be also proved upon oath that the strong beer or ale so added to such guile, was added in the sight and view of the gager. 8 & 9 *W. c. 19. f. 2.*

18. And whereas many brewers, having strong beer or ale remaining in the brewhouse from the time it was brewed, until the next guile or brewing, the quality of which they frequently alter by mixing with the same new small beer, or old returned drink, and then add the beer and ale so altered to the next guile; if it shall appear to the gager that the quality of such strong beer or ale so remaining in the brewhouse of a former guile, and added to a guile of new drink, hath been so altered since it was brewed, he shall return all such beer and ale so altered and added to a guile of new drink, as if the same were then originally brewed, and had never been charged before. 8 & 9 *W. c. 19. f. 3.*

19. If any common brewer, innkeeper, or victualler, shall cleanse or remove out of his brewhouse any part of his guile, or brewing of beer, ale, or worts, before the whole of such guile is brewed off, and be in his tuns, backs, or coolers, and until the gager shall or might have taken an account of the same, without first giving notice to the supervisor or gager, at what time, and how much of such guile or brewing he intends to cleanse or remove, and where he intends to dispose of the same; he shall for every barrel forfeit 40 s. 7 & 8 *W. c. 30. f. 21.*

20. Where it shall appear to the gager, that any worts are missing, or not fairly let down into the tun, and the gager cannot find the same, he may charge for so much beer or ale, as such worts so missing would reasonably make. 1 *W. s. 1. c. 24. f. 6.*

21. Gagers may take their gages, and make their returns and charges, upon warm worts in the backs, coolers, or other vessels; and in such case make allowance of one tenth part thereof for wash and waste; which worts shall not be afterwards charged, when made into beer or ale. 1 *W. s. 1. c. 24. f. 7.*

22. If any common brewer, innkeeper, victualler, or other retailer of beer or ale, shall after an account hath

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been taken by the gager, convert any small beer or small worts into strong beer or ale, by mingling the same, and shall sell, deliver out, or retail the same, without giving notice to the same gager, of the quantity so mingled and converted, or if any such brewer or retailer shall conceal or convey any beer, ale, or worts not gaged, from the sight of the gager, whereby the king may be defrauded of the duty; he shall forfeit 20s a barrel. 15 C. 2. c. 11. f. 12. 1 W. sess. 1. c. 24. f. 11.

And by the 2 G. 3. c. 14. If any common or other brewer, innkeeper, victualler, or retailer of beer or ale, shall mix, or cause or suffer to be mixed, in any vessel, tub, measure, or otherwise however, any strong beer, ale, or strong worts, with any small beer or small worts or with water, after the gage shall have been taken; he shall forfeit 50l. f. 2.

Time of deliver-
ing out.

23. No common brewer shall sell, deliver, or carry out any beer or ale to any of his customers, either in whole cask or by the gallon, in any city or market town, before notice given to an officer of excise, but between three in the morning and nine in the evening from *Mar.* 25, to *Sep.* 29; and between five in the morning and seven in the evening between *Sep.* 29, and *Mar.* 25; on pain of 20s a barrel. 15 C. 2. c. 11. f. 11.

And by the 10 & 11 W. c. 21. No vinegar maker shall receive into his custody any liquors for making of vinegar, nor deliver out any vinegar in casks or by the gallon, without notice first given to the officer, unless from *Sep.* 29, to *Mar.* 25, yearly, between seven in the morning and five in the evening; and from *Mar.* 25, to *Sep.* 29, between five in the morning and seven in the evening; on pain of 50l. f. 12.

And on receiving such liquors into his custody, he shall shew the same to the gager before he mix them with any other liquors, rape, or other materials; on pain of 20l. *id.* f. 13.

Mixing after de-
livered out.

24. If any common brewer, or innkeeper, shall on carrying out his drink, or after it is carried out, mix any small beer or small worts, with any strong beer or ale on his dray, or in any victualler's cellar, or other place; he shall forfeit 5l: and the gager may taste the drink upon the dray, and also upon request may enter the cellar or other room in the possession of any innkeeper or victualler that shall receive any drink from a common brewer, and taste the drink in the same; and if the innkeeper or victualler shall refuse him to enter into his cellar or other

other rooms, or to taste the drink in the same, he shall forfeit 5*l.* 7 & 8 *W. c.* 30. *f.* 23.

25. No retailer of beer or ale, shall after the receipt thereof from the common brewer, mix any beer, ale, or worts of extraordinary strength, with any small beer, ale, or worts, in any vessel containing three gallons or more; on pain to forfeit for every barrel so mixt, double the duty of excise for strong beer or ale, and so proportionably for any greater quantity. 22 & 23 *C. 2. c.* 5. *f.* 11. Mixing by the retailer.

26. And for avoiding uncertainties in the returns of the gagers, the barrel of beer (within the bills of mortality) shall be 36 gallons of four quarts to the gallon, according to the standard in the exchequer; and the barrel of ale 32 gallons: And all other the liquors aforesaid, shall be reckoned according to the wine gallon. 12 *C. 2. c.* 24. *f.* 34. 1 *W. st.* 1. *c.* 24. *f.* 5. Measure and allowance for leakage within the bills of mortality.

And the common brewer, not selling the same by retail, for waste by filling and leakage, shall be allowed on every 23 barrels of beer, whether strong or small, three barrels; and upon every 22 barrels of ale, two barrels. 12 *C. 2. c.* 24. *f.* 36.

But if any common brewer shall make a false entry, and be convicted thereof; he shall, over and above other penalties, forfeit the said allowance for six months then next ensuing. 12 *C. 2. c.* 24. *f.* 37.

27. In all other places, 34 gallons shall be reckoned for a barrel of beer or ale; and the allowance for waste shall be 2½ on every 23 barrels. 1 *W. st.* 1. *c.* 24. *f.* 5. In other places.

28. Notes of every gage, signed by the gagers, containing the inches and tenths of the backs, and wants of the tuns and quality of the liquors, shall be left by them with the common brewers of ale or beer, or some servant (if demanded) at the time of taking the gages; on pain of 40*s.* 7 & 8 *W. c.* 30. *f.* 46. Notes of the gage and charge to be left.

And by the same act, the gager shall, within three days after the end of every week, deliver to or leave with the brewer or retailer, or their servants, a true copy under his hand of each respective charge by him made, containing the quantity and quality of the liquors by him charged in such week; and if he shall neglect or refuse (after demand in writing, 12 *G. c.* 28. *f.* 30.) to leave such copy, or shall charge such person more than such copy contains, he shall forfeit 10*l.* *f.* 25.

29. The commissioners of excise or appeals, or justices of the peace, on complaint of any over charge returned upon them by the gager, shall hear and determine the Relief in case of overcharge.

Entry and pay-
ment of debts.

complaint; and examine witnesses on oath, and thereupon, or by other due proof, may discharge such complainant of so much of his charge as shall be made out before them. 1 *W. Jess.* 1. c. 24. f. 13.

30. All common brewers of beer and ale, shall once in every week; and all innkeepers, alehousekeepers, victuallers and other retailers of beer, ale, cyder, perry, or metheglin, brewing, making or retailing the same, shall once in every month, make entries at the excise office, of all such liquors brewed, made or retailed in that week and month respectively. 12 *C. 2. c. 24. f. 29.*

And all such common brewers who do not once a week make due entries, shall forfeit 10 l. And every such innkeeper, who doth not make true entries once a month, shall forfeit 5 l. And every alehousekeeper, victualler, or other retailer, who does not once a month make due entries, shall forfeit 20 s. *id. f. 30.*

And every common brewer who shall not pay within a week after he made his entry, or ought to have made his entry, shall pay double value of the duty: and every innkeeper, alehousekeeper, victualler, or other retailer who shall not pay within a month after he made his entry, or ought to have made his entry, shall pay double value of the duty. *id. f. 31.*

Provided that no such person shall be compelled to travel for making the said entries, or payment of the said duties, or other cause whatsoever touching the same, if he live in a market town, out of the said town: if he live out of a market town, then to no other place than to the next market town to his habitation in the same county, on the market day. *id. f. 32.*

But no common brewer shall be prosecuted for any forfeiture for any misentry or short entry, if he shall in one week after the delivery of the copy of the return made by the gager, rectify his entry according to the said return, or otherwise discharge himself. 15 *C. 2. c. 11. f. 6.*

But no brewer shall have any benefit of this proviso, on any information to be brought against him for non-entry, false entry, or non-payment; if it shall appear by the evidence, that he did not *bona fide* shew to the gager all the beer, ale, and worts of each respective guile, for such time for which such copy of the return was made; or if any apparent fraud was acted, to defraud the king of his duty, for any part of the drink brewed in the time for which such copy of the return is made or given by the gager. 1 *W. Jess.* 1. c. 24. f. 10.

31. But

31. But if any person shall brew, and sell by retail, any small quantities of beer or ale in any fair, who is not otherwise a common brewer or retailer thereof, and shall before such selling and retailing, pay the excise for the same: he shall be freed from all penalties relating to such entries and the like. 12 C. 2. c. 24. f. 39. Exception of selling in fairs.

32. If any *sweets*, having paid the duty, shall be intended to be removed, the excise officer shall on request give a certificate under his hand, expressing the quantity and quality, and from whom and to whom they are to be sent; and if any maker shall otherwise remove them, or vintner receive them, he shall forfeit 10s a gallon, and also the liquor and casks. 6 G. c. 21. f. 22. Permit for removal after duty paid.

33. The commissioners and subcommissioners may compound with innkeepers and others for the duties. 12 C. 2. c. 24. f. 40. Compounding,

But no person who hath compounded shall, during the term of such composition, suffer any beer or ale to be brewed within his brewhouse, for any other common brewer, without first giving notice to the commissioners or subcommissioners, and forthwith paying down the excise thereof; upon pain that as well the brewer who shall brew the same, as the brewer for whom it shall be brewed, shall forfeit 5l for every barrel. 15 C. 2. c. 11. f. 14.

34. All the brewing vessels and utensils for brewing, into whose hands soever they shall come, and by what conveyance or title soever they be claimed, shall be subject to all the debts and duties of excise in arrear for any beer or ale made in the said brewhouse; and shall also be subject to all penalties and forfeitures against the laws of excise; and it shall be lawful to levy debts and penalties, and use such proceedings against the utensils therein contained, as it may be lawful to do, in case the debtor or offender using the said utensils had been the real owner thereof. 15 C. 2. c. 11. f. 13. Utensils liable to the penalties and duties.

35. No information shall be brought against any common brewer, or alehousekeeper, vinegar maker, or cyder maker, for any misentry or offence, but within three months after the offence committed; and notice thereof shall be given to him in writing, or left at his dwelling house, within a week after laying and entering the information. 1 W. sess. 1. c. 24. f. 16. 12 & 13 W. c. 11. f. 17. Limitation of actions.

36. If any common brewer, or maker of cyder, making beer, ale, or cyder for sale, shall deliver to any distiller or vinegar maker, any wash, tilts, ale-beer, vinegar-beer, or cyder, Delivering materials to distillers.

Carrying coast-
wise.

cyder, without first giving notice to the gager, what quantity he intends to deliver, and when, and to whom; he shall forfeit for every barrel 20 s. 8 & 9 *W. c.* 19. *f.* 9.

37. The master of any vessel, in which shall be shipped any cyder or perry to be carried coastwise, shall, within three days after his arrival at any port where any part thereof is to be delivered, give to the proper officer of excise there an account in writing of the whole quantity by him received on board, distinguishing therein the names and places of abode of the persons by whom the same was put on board, and at what place; and the names and places of abode of the persons to whom the same was consigned, and where to be delivered: Which if he shall not do, or shall deliver any part thereof at sea, or in any other place than where it was consigned, (unavoidable accidents excepted;) he shall forfeit 20 *l.* And he shall, within 21 days after his arrival at the place of delivery, land all the cyder and perry to be delivered there; on pain of forfeiting all such as shall not be so landed, and the same may be seized by any officer of excise, together with the casks or other package. 6 *G. 3. c.* 14. *f.* 8.

Exportation.

38. Ale, beer, cyder, or mum, may be exported; paying custom 1 s a tun. 1 *W. c.* 22.

And on exportation thereof the excise shall be repaid. 22 & 23 *C. 2. c.* 5. *f.* 15. 7 *G. 3. c.* 20. *f.* 31. 6 *G. 3. c.* 14. *f.* 16.

But by the 1 *G. 3. c.* 7. on repayment of the excise on strong beer and ale, there shall be a deduction of 3 d a tun for the charges of the officers. *f.* 5.

And when barley is at 24 s a quarter or under; a bounty shall be paid to the exporter of strong beer or ale, of 1 s a barrel. *f.* 6.

II Candles.

Duty on candles
imported.

1. For every pound of tallow candles imported, shall be paid in the whole, by the several acts, 2 d $\frac{1}{2}$. 2 *W. sess.* 2. *c.* 4. *f.* 37. 8 *An. c.* 9. *f.* 1. 9 *An. c.* 6. *f.* 11.

For every pound of wax candles imported, 8 d. 8 *An. c.* 9. *f.* 1. 9 *An. c.* 6. *f.* 11.

Duty on candles
made in Great
Britain.

2. For all candles made of wax, or usually called or sold for wax candles (notwithstanding the mixture of any other ingredients) made in Great Britain, shall be paid 8 d a pound.

All other candles 1 d a pound. 8 *An. c.* 9. *f.* 1. 9 *An. c.* 6. *f.* 11.

3. But

3. But the said duties shall not be charged on such ^{Rush lights ex-} small rush lights, as shall be made by any persons to be used ^{cepted.} in their own houses only, so as none of them be sold or delivered out or made for sale, and so as they be once only dipped in, or once drawn thro' grease or kitchen stuff, and not thro' any tallow melted or refined. 8 *An. c. 9. f. 31.*

4. During the continuance of the duties upon candles, ^{Oil not to be} no person shall use in the inside of his house, any lamp, ^{used instead of} wherein any oil or fat (other than oil made of fish within ^{candles.} Great Britain) shall be burned for giving light; on pain of 40 s. 8 *An. c. 9. f. 18.*

5. No maker of candles shall erect, set up, alter, or use ^{Places of making} any melting house, workhouse, warehouse, storehouse, shop, ^{candles to be} room, or other place for the making or keeping of candles, ^{entered.} or for the melting or keeping any wax, tallow, or other materials proper to be made into candles; or use any copper, furnace, moulds, or other vessel for melting of wax, tallow, or other materials to be made into candles; without notice thereof being first given in writing at the next office of excise; on pain of 50 l. 8 *Ann. c. 9. f. 6.*

And all candles, wax, tallow, and other materials for making candles, which shall be found in any private melting house, workhouse, or other place, and all private coppers, furnaces, and other vessels, for which no entry shall be made, or notice given, shall be forfeited, or the value thereof. 8 *An. c. 9. f. 17.*

And by the 11 *G. c. 30.* If any maker of candles (except compounders) shall use any melting house, shop, or other place, for making or keeping of candles, or for melting or keeping of wax, tallow, or other materials, or use any copper or other vessel for melting the same, or any moulds or other utensils for making of candles, without having made entry thereof in writing at the next excise office; he shall forfeit 100 l. *f. 23.*

And the officer between five in the morning and eleven in the evening, with or without a constable, and between eleven in the evening and five in the morning, with a constable, shall be permitted on request to enter and search; and all chests and other like things locked up, shall on his request be opened; on pain that every person obstructing or molesting him, shall forfeit 100 l. 11 *G. c. 30. f. 24.*

And if the officer on his searching any unentered house or place, shall find candles either made or making, or tallow or other materials melting or melted, or cottons or rushes spread, or any copper, mould, or other utensil warm with

tallow

tallow or other materials; this shall be sufficient evidence to convict the offender in the penalty of 100 l. for having used the same not being entered. 11 G. c. 30. f. 25.

And leaving a summons at the place where the discovery was made, directed to the person prosecuted by his right or assumed name, shall be deemed as effectual as if personally delivered to him, and by his proper name. *id.* f. 26.

Officer to enter
and take ac-
count.

6. The officer shall at all times, by day or by night, and if in the night, then in presence of a constable, be permitted on his request, to enter the house, melting house, warehouse, or other place, belonging to, or used by any person who shall be a maker of candles; and by weighing or tale of the candles, or otherwise, to take an account of the quantity; and shall thereof make a return in writing to the commissioners, or to whom they shall appoint; leaving a true copy of such report, under his hand, with or for the maker; and if he shall refuse or neglect to leave such copy (on demand thereof made in writing, 12 G. c. 28. f. 30.) he shall forfeit 40 s. 8 An. c. 9. f. 10.

The maker to
keep scales and
weights.

7. And the maker shall keep just scales and weights, where he makes his candles; and shall permit and assist the officer to make use thereof, on pain of 10 l. 8 An. c. 9. f. 11.

And by the 10 G. 3. c. 44. if he shall make use of insufficient scales or weights, he shall forfeit 100 l: But not to be prosecuted both on this and the former act.

Notice and time
of making.

8. No maker of candles for sale, shall begin to make any course or making of candles, without notice thereof first given to the officer, unless from *Sep.* 29, to *Mar.* 25, yearly, between seven in the morning and five in the evening; and from *Mar.* 25, to *Sep.* 29, between five in the morning and seven in the evening; on pain of 10 l. 10 An. c. 26. f. 107.

Maker to declare
the number and
sizes.

9. Every maker of candles for sale, shall before he begins to make or dip any making or course of candles, declare to the officer the number of sticks he designs to make and the size of the candles whereof each stick is to consist; and if such making or course is intended to be of moulded candles, then he shall declare to the officer, before he begins to fill the moulds, how many moulds he intends to fill at such making, and how often he intends at such making to draw the moulds: and if he shall neglect or refuse to make such declaration, or shall after such declaration make any

Exercise. (Candles.)

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any increase of his number of sticks, or of the sizes of his candles, in such making or course; or in the case of making mould candles, shall fill a greater number of moulds, or draw such moulds oftner than shall be declared; or if he shall, after the weighing of any making of candles by the officer, increase the weight of such candles, by redipping, or otherwise; he shall forfeit 10l. 10 *An. c. 26. f. 106.*

And by the 11 *G. c. 30.* If any maker of candles for sale, shall begin to make any course of candles, not being mould candles, or make preparation for the same without notice in writing to the officer of such his intention, and of the time of the day or night when he intends to begin, and of the number of sticks of which such making is intended to consist, and of the sizes and number on each stick; he shall in default hereof, or if he have at such making more sticks, or more candles, or larger than mentioned in the notice, forfeit 50l, and if after such notice, he shall not begin at the time, or within three hours of it, such notice shall be void. *f. 27.*

And lighting a fire under a vessel, for melting the materials, or finding in such a vessel, or in any mould, the materials melted or melting, or cottons or rushes spread or spreading, shall be deemed to be such a *beginning to work*, as shall make him liable to the said forfeiture. *f. 28.*

10. The officer shall be permitted to take an account of the quantities of wax, tallow, and other materials; and if he shall miss any that he had taken account of at the last time he was at the maker's, and shall not on demand receive satisfaction what is become thereof, the officer may charge such quantity of candles, as the materials so missing in his judgment would have made, not exceeding 108 lb. of candles for every 112 lb. of materials missing, and so proportionably. 8 *An. c. 9. f. 12.*

And if any such maker shall obstruct the officer, he shall forfeit 20l. *f. 13.*

11. Candles cracked or spoiled in making, may be defaced by the officer, who shall make allowance for the duty. 8 *An. c. 9. f. 29.*

12. No maker of candles shall (on pain of 20l) remove any candles, before the officer hath taken account of the same, without giving to the officer, within the bills, 24 hours notice; and elsewhere, two days notice, of his intention to remove the same. 8 *An. c. 9. f. 14.*

13. The maker shall keep his candles which have not been surveyed, separate from all other candles which have been surveyed, for 24 hours after making, within the

The officer shall charge for materials missing.

Candles spoiled in making.

Removing candles before surveyed.

Candles unsurveyed to be kept separate.

the bills, and for two days elsewhere; unless they shall have been sooner surveyed by the officer; on pain of 5 l. 8 *An. c. 9. f. 15.*

Search for candles concealed.

14. If the officer shall have cause to suspect, that candles are privately making in any place; or that any candles are concealed with intent to avoid the duty; in such case, on oath made by such officer before a commissioner or one justice residing near to the place, setting forth the ground of his suspicion, such commissioner or justice may, if he shall judge it reasonable, by special warrant authorize such officer, by day or night (but if in the night, in presence of a constable), to enter into every such place suspected, and to seize and carry away as forfeited all such candles as he shall there find so privately making, together with all materials then ready or preparing for making the same, and also all such candles as he shall find so concealed, together with the boxes or other package containing the same: And the person that shall be found privately making such candles, or in whose possession any such shall be found, shall forfeit 100 l. 5 *G. 3. c. 43. f. 20.*

Further penalty of removing, mingling, or concealing.

15. If any maker of candles for sale, shall mingle candles which have not been weighed by the officer, with those which have; or shall fraudulently remove any before weighing; or conceal any candles or materials: he shall forfeit 100 l. 11 *G. c. 30. f. 30.*

Entry of candles made.

16. Every person who shall make any candles within the bills of mortality shall monthly, and elsewhere once in every six weeks, make a true entry in writing, at the next excise office, of all candles by him made within such time; which entry shall contain the weight, number, and size of the candles, and what quantity thereof was made at each course in the several weeks; on pain for every neglect of entry to forfeit 20 l. Which entry shall be upon the oath of the maker or his chief workman, according to the best of their knowledge and belief; the said entries and oaths, within the bills, to be made with and administered by such officer as the commissioners shall appoint at the general excise office, and elsewhere by the collectors or supervisors. 8 *An. c. 9. f. 7.*

But he shall not be obliged to go further than the next market town, for making such entry. *f. 8.*

Duty to be cleared off.

17. And the maker shall in four weeks within the bills, and elsewhere in six weeks, after such entry, pay and clear off the duties; on pain of double duty: and no maker

maker after default in payment shall sell, deliver, or carry out any candles till he hath paid off the duty, on pain of double value. 8 *An. c. 9. f. 9.*

18. And if there shall be found in the possession of any maker of candles for sale, any candles not mentioned in the entry made by him, and of which the officer hath not had an account, and the duties have not been paid; he shall be chargeable with the duties, and if he do not pay the same, he shall be liable to double duty, unless he shall prove that the duty hath been paid, or that he bought the same of some other chandler who had paid the duty, and that he gave six hours notice in writing to the officer, or at the next excise office, of his intention to buy the same, and of whom. 11 *G. c. 30. f. 29.*

19. No person shall expose to sale any candles, unless in his publick shop or warehouse, publick fair or market; on pain of 5*l.* 8 *An. c. 9. f. 18.*

20. The commissioners or such person as they shall appoint, and in default thereof the collector or supervisor, may compound with persons that make candles for their own private houses, for the duties at 1*s* a year for every head in the family, to be paid quarterly; and such person shall not be liable to the duties. 8 *An. c. 9. f. 20.*

But if any person after composition shall sell or deliver out any candles, or shall permit any other person to make candles in his house or outhouse; or shall have more persons of his family than he shall compound for, without giving notice of them in writing at the next excise office, at or before the next quarter day, and paying the like composition for them, he shall forfeit 5*l.* and lose the benefit of his composition, and be liable to the duties and survey of the officers; and for every pound of candles so privately sold or delivered out or made, shall forfeit 5*s.* *f. 21.*

And every such compounder, who shall make default in continuing the same, shall in ten days make entry upon oath of all such candles as he shall be possessed of, at the excise office, on pain of forfeiting 20*l.* and the candles of which no such entry shall be made; and in six days after such entry, shall pay the duties, on pain of double value of the candles, and his house and other places shall be liable to the search of the officers. 9 *An. c. 6. f. 14.*

21. Cocquets granted for shipping candles to be landed in any other part of the kingdom, shall express the quality, quantity, and weight, the mark of the package, and by whom made and sold, and where consigned; and if they shall be shipped without such cocquet, they shall be

Candles not entered, nor duty paid.

Candles where to be sold.

Compounding.

Candles carried coastwise.

forfeited, and seized, together with the package. 23 G. 2. c. 21. f. 29.

Exportation and
importation.

22. No candles shall be imported, otherwise than in some package, containing at least 224 lb. of neat candles, and stowed openly in the hold; on pain of being seized and forfeited, together with the package; and the master of the vessel shall forfeit 50*l*. 23 G. 2. c. 21. f. 27.

But on information brought against such master, he may detain the wages of the mariners, till it be determined; and if it shall appear, that the candles were put on board by any mariner without the master's knowledge, the master may apply such mariner's wages, in payment of the forfeiture. 26 G. 2. c. 32. f. 8.

And the officers of excise (in like manner as the officers of the customs) may go on board any vessel, and search for and seize all candles forfeited, together with the package; and they may likewise seize such as before entry and payment of duties, shall be found unshipping or unshipped. 23 G. 2. c. 21. f. 28.

Candles for which the duty hath been paid, may be exported, and the duty drawn back. 8 An. c. 9. f. 24, 25, 26.

But no drawback shall be allowed, on the exportation of any foreign candles imported. 23 G. 2. c. 21. f. 36.

And the officers of excise or customs may seize any candles, with the package, that shall be found in any vessel, cart, or other carriage, where they shall have good reason to believe, that the same were made in some private workhouse, or clandestinely imported without payment of duty; or that the same have been exported and relanded after payment of the duty; and if the party in whose possession the same shall be found, shall not at the hearing of the information, make it appear, that the duty hath been paid or secured, he shall forfeit 5*l* for every 100*lb* weight, and also the candles and package shall be forfeited. f. 30.

And if any foreign candles shall be unshipped, with intention to be laid on land, before entry and payment of the duties, or shall be landed again after shipping for exportation upon debenture; the same, together with the package, vessels, boats, horses, and other carriages, used in landing or conveying the same, shall be forfeited, and may be seized by any officers of the customs or excise; and the persons from whom the same shall be seized shall forfeit 5*l* for every hundred weight. f. 31.

And if any person shall knowingly harbour or conceal any candles unlawfully imported, or relanded after shipping for exportation upon debenture; he shall, whether he

claims

claims any property therein or not, forfeit 50l for every hundred weight, together with the candles and package. *f. 32.*

And where any such candles shall be seized as forfeited, and no person shall claim the same in 20 days, if it is within the limits of the chief office of excise in *London*, the officer who made the seizure may cause notice signed by the solicitor of excise, to be affixed at the *Royal Exchange*, of the time of proceeding to trial and condemnation of the same by the commissioners of excise; and if it is out of the said limits, then publick notice shall be given by proclamation at the next market town on the market day next after the said 20 days, of the day and place where the justices will proceed to trial and condemnation thereof. And the judgment thereon, shall not be liable to any appeal, or to be removed by certiorari. *f. 33.*

23. All the said fines, forfeitures, and penalties, may be recovered and mitigated as by the laws of excise, or in the courts at *Westminster*; and distributed half to the king, and half to him that shall inform or sue. *8 An. c. 9. f. 28. 11 G. c. 30. f. 39. 24 G. 2. c. 40. f. 33.*

24. And if the party is not satisfied with any judgment of the justices on the act of 23 G. 2. c. 21. before mentioned, he may appeal to the next quarter sessions, except in the case before mentioned where no person shall claim the goods seized. *f. 37.*

25. And on information of the said act of 23 G. 2. the mitigation shall not reduce the penalty to less than a fourth part, over and above the costs and charges to be allowed. *f. 38.*

26. And where candles shall be seized for nonpayment of duties, or non-entry, and it shall be disputed whether such payment or entry was made or not, the proof shall lie on the claimer, and not on the officer. *23 G. 2. c. 21. f. 35.*

27. All candles, materials, and utensils for making of candles, in custody of any maker of candles, or person in trust for him, shall be chargeable with all duties in arrear, and subject to all penalties and forfeitures; in the same manner as if the debtor or offender were the lawful owner, *8 An. c. 9. f. 19.*

III. Coaches.

1. For every coach, berlin, landau, chariot, calash with four wheels, chaise marine, chaise with four wheels, and

D 2

caravan,

Excise. (*Coaches.*)

caravan, kept by any person for his own use, or to be let out to hire; shall be paid 4*l* yearly: and for every calash, chaise, and chair with two wheels, kept by any person for his own use, or to be let out to hire; shall be paid 40*s* yearly. 20 G. 2. c. 10. s. 1.

But this shall not extend to *licensed hackney coaches*, within *London* and *Westminster* and the suburbs thereof, not employed in carrying persons more than ten miles from the said cities. s. 11.

Nor to *coaches kept for sale*: But no such carriage shall, whilst in possession of the coachmaker or other person, be employed for his own use, or for the use of any other person (other than such whose carriage shall be then and there mending), or be let out to hire; on pain of 20*l*. s. 12.

Nor to any *publick stage coach*, which is constantly employed in carrying passengers for hire, on certain fixed days in every week, and not let to hire by way of by-jobb, for a day, or any longer time. s. 7.

Nor to any *post chaise* kept for hire by the postmaster general, or any deputy postmaster: But such post chaises shall in 30 days after letting out the same, be entered by the owners at the next office of excise; and shall (besides the king's arms) have such mark of distinction fixed thereon, as shall be appointed by the commissioners; on pain of 20*l*. s. 8, 9.

And the commissioners shall cause a mark of distinction to be fixed on every such carriage, that shall be let out to hire; and if any person shall let out to hire any such carriage without such figure fixed thereon, or shall take off the same when fixed; he shall forfeit 20*l*. s. 10.

Moreover, no person shall be obliged to pay the said yearly sum of 4*l* for more than five such carriages kept for his own use only; but if he keeps the same for supplying any waiting jobb, by the day, week, month, quarter, or any other time, or to be let out to hire, he shall pay 4*l* for each, tho' exceeding the number of five; and every person who shall keep such carriage with two wheels, to be let out for hire, shall pay 40*s* yearly for each, tho' exceeding the number of five. s. 2.

Entry and payment of the duties,

2. Every person who shall keep such coach or other carriage, shall in 20 days after he shall begin to keep the same, and within 20 days yearly after the expiration of 12 calendar months after the time of giving such first notice; —give notice in writing, at the chief office of excise in *London* (if within the bills); and elsewhere, shall give notice at the next office of excise,—of his keeping the same,

same, and the number, and whether with four or two wheels, and where he resides; and at the same time pay down the duties; on pain of 20l. *f. 4, 5.*

But if the duties are paid, and entry made, before information brought, the parties shall not be prosecuted, tho' it be not strictly within the time limited. *f. 15.*

And the said entry and payment shall be registred by the proper officer, and a receipt given for the duty, of which receipt the officer shall keep an indented duplicate. *f. 6.*

3. Where a person shall die before the end of the year, Persons dying before the person claiming title to the coach, may use it, as the deceased might have done. *f. 16.*

4. All the said rates and duties, and all forfeitures and offences, shall be determined by the commissioners of excise (or of appeals, in case of appeal), within the limits of the chief office in London; and elsewhere, by two justices near; who shall, on complaint upon oath, summon the party, and on his appearance or contempt, may examine the fact, and on proof thereof either by confession, or oath of one witness, give judgment, and issue warrants for levying penalties by distress and sale (if not redeemed in 14 days); which shall be employed (all necessary charges first deducted) half to the use of the king, and half to the informer: And for want of sufficient distress, they may imprison the party till satisfaction is made. *f. 13, 14.*

[But as these duties chiefly affect the nobility and persons of distinction, it had been better if the act had been more explicit with respect to the punishment; otherwise it may not be so safe for justices of the peace, upon such vague and general words, to imprison a peer of the realm, or distrain the goods of a member of parliament. But if the justices will proceed, or shall be compelled by *mandamus*, or otherwise, so to do; they must remember withal, that by the 27 G. 2. c. 20. they may not order the distress to be detained more than eight days, nor less than four.]

5. Persons aggrieved by the determination of the justices, may appeal to the next quarter sessions. *f. 13.*

IV. Coffee, tea, and chocolate.

1. For all coffee imported, shall be paid at the custom house, in the whole, the sum of 3d a pound. 10 G. c. 10. *f. 48, 49.*

Excise. (*Coffee, &c.*)

And an inland duty, to be paid by the maker or seller, of 2s 6d a pound. 10 G. c. 10. f. 4, 6. 5 G. 3. c. 45. f. 12.

Except coffee of the growth of the *British* plantations in *America*; which shall pay only 1s 6d a pound. 5 G. 2. c. 24. f. 1.

Duty on tea,

2. No tea shall be imported, but from the place of its growth; on pain of forfeiture. 11 G. c. 30. f. 8.

And by the 18 G. c. 26. Over and above the customs on importation, there shall be paid on all tea, an inland duty of 1s a pound, and 25l for every 100l of the gross price at which it shall be sold at the *East India* company's sales; which shall be paid in ready money by the proprietor to the collector, before it be taken out of the warehouse. f. 2.

In order to which, the commissioners may appoint officers to attend at the *East India* company's sales, and take an account of the names of the buyers and prices, and make report thereof to the commissioners; from whence the 25l *per cent.* shall be ascertained; and to prevent mistakes, the said officers may inspect the company's books. 18 G. 2. c. 26. f. 6.

And every person declared the best bidder at such sale, shall within three days after, deposit with the company or their clerk 40s for every tub and chest of tea, on pain of six times the value, and such sale shall be void, and the same shall in 14 days after be put up again. 18 G. 2. c. 26. f. 7. And by the 13 G. 3. c. 44. the deposit for every tub and chest of bohea tea shall be 4l. f. 2.

And by the said act of 13 G. 3. c. 44. The commissioners of the treasury may grant licence to the *East India* company to take out of the warehouse (without the same having been put up to sale) and to export to any of the *British* plantations in *America*, or to foreign parts, such quantities of tea as they shall think proper, discharged from the payment of any duties or customs whatsoever. Provided, that no such licence shall be granted, unless it be made appear to the said commissioners that there will be left remaining in the warehouses a quantity of tea not less than ten millions of pounds weight. f. 3, 4, 5, 6.

Duty on cocoa
nuts and chocolate.

3. No chocolate ready made, or cocoa paste, shall be imported, on pain of forfeiting the same, and double value; and also the bags, casks, and other package. 10 G. c. 10. f. 2.

For cocoa nuts imported, shall be paid at the custom house in the whole, 10s a hundred weight. 10 G. c. 10. f. 47, 49.

And if any person shall import any cocoa nut shells or husks, without the nuts, the officers of the customs, excise, or inland duties, may seize them, with the bags, boxes, and package; and after condemnation they shall be destroyed or otherwise disposed of, as the respective commissioners, or three of them shall appoint; and they may reward such officer in any sum not exceeding 20s a hundred weight. 4 G. 2. c. 14. f. 12.

For all chocolate made or sold in Great Britain, shall be paid by the maker or seller, 2s 3d a pound. 10 G. c. 10. f. 6. 32 G. 2. c. 10. f. 10.

4. No coffee shall be imported otherwise than in cask, chest, case, bag, or other package, which shall contain 112 lb at the least, to be stowed openly in the hold; on pain of forfeiting the same, together with the package; which may be seized by any officer of the customs or excise. In what quantities to be stowed. 5 G. 3. c. 43. f. 34.

5. The excise officers may go on board any ships, and search as the officers of the customs may do, for coffee, tea, cocoa nuts, chocolate, and cocoa paste, and seize all such as shall be forfeited, or shall be unshipped without entry and payment of duties, with the boxes, bags, and other package. Officers of excise may go on board and search. 11 G. c. 30. f. 1.

6. By the 9 G. 2. c. 35. Where any vessel coming from foreign parts, and having six pounds or more of tea on board, shall be found at anchor, or hovering within two leagues of the shore, or be within the limits of any port, and not proceeding on her voyage, wind and weather permitting; all such tea, with the chests and other package, or the value thereof, shall be forfeited (whether bulk shall have been broken or not), and the same may be seized and prosecuted, or the value thereof sued for by the officers. Ships hovering near the coast. f. 22.

And by the 5 G. 3. c. 43. Where any vessel coming from foreign parts, and having on board twenty pounds of coffee, shall be found at anchor, or hovering within two leagues of the shore; or shall be discovered to have been within the limits of any port, and not proceeding on her voyage, wind and weather permitting: all such coffee, together with the package, or the value thereof, shall be forfeited, whether bulk shall have been broken or not; and the vessel also with her tackle and furniture shall be forfeited, provided such vessel doth not exceed the burthen of 50 tons.

7. The importer of any coffee, tea, or cocoa nuts, within 30 days after the master or purser shall have or ought to have made entry at the custom house, of the The said goods to be entered and warehoused. burthen,

burthen, contents, and lading of the vessel, shall make due entry of the said coffee, tea, or cocoa nuts, with an officer of excise to be appointed by the commissioners for that purpose; and the same, on paying or securing the duties shall be landed and put into a warehouse, to be provided at the charge of the importer, and approved of by the commissioners of the customs. 10 G. c. 10. f. 26.

5 G. 3. c. 43. f. 35.

And if any person shall import any coffee, tea, or cocoa nuts, without entry at the custom house, and bringing the same into the warehouse; the same shall be deemed clandestinely run, and may be seized by any officer of the customs or inland duties; and the same shall be forfeited with the package, together with the horses, carts, and carriages. 10 G. c. 10. f. 27.

And if any person shall neglect or refuse to make such entry with the officer of excise as aforesaid, or to land the same as is above directed; all such coffee, tea, and cocoa nuts shall be forfeited, together with the package wherein the same shall be contained on board such vessel, belonging to such importer so neglecting or refusing; which may be seized by any officer of the excise. 5 G. 3. c. 43. f. 35.

Provided, that this shall not extend to any coffee or tea imported by the East India company. f. 36.

Owner and officer to have each a lock and key.

8. And the owner of the said goods, and the officer for the inland duties, (who shall be appointed by the commissioners of the said duties) shall have each a lock and key; and the owner may in presence of the said officer, and of the warehouse keeper (to be appointed by the commissioners of the customs) view, garble, and sort the said goods, to make them merchantable, and receive them out in the manner hereafter mentioned. 10 G. c. 10. f. 26, 29, 30.

Taking out of the warehouse coffee and tea for home consumption.

9. That is to say, As to coffee and tea in the first place; — If they are intended to be taken out for home consumption, the proprietor, within the bills, shall make entry with the receiver or collector in *London*, of so much as he intends to take out of the warehouse, and pay down the duty; and elsewhere shall make entry at the next office, and pay the duties to the collector; and on producing a certificate signed by such collector or receiver (certifying that he has received the duty) to the warehouse keeper, he shall deliver out so much as is mentioned in the certificate; and shall deliver a permit to accompany such coffee or tea so delivered out, which shall

also

also be signed by an officer attending the warehouse, to prevent the seizing thereof. 10 G. c. 10. f. 26.

10. And as to cocoa nuts, intended to be taken out of the warehouse, to be made into chocolate—an entry thereof shall be made by the proprietor with the receiver or collector, as a charge on him and also on the buyer; who shall certify such entry to the warehouse keeper; and on such certificate, the quantity of cocoa nuts mentioned therein shall be delivered out with a permit signed by the officer at such warehouse, to be delivered to the officer where they are intended to be carried, that the same officer may take the same into stock. 10 G. c. 10. f. 26.

11. And as to coffee, tea, and chocolate intended for exportation;—it shall be delivered out of the warehouse on security given that it shall be exported, and not re-landed; which security shall be discharged, on a certificate under the common seal of the chief magistrate in any place beyond the seas, or under the hands and seals of two known *British* merchants there; that the same were there landed, or on proof by credible persons that it was taken by enemies, or perished in the seas. 10 G. c. 10. f. 26.

But by the 18 G. 2. c. 26. No drawback shall be allowed on tea exported. f. 5. Saving that it may be exported to *Ireland*, or the *British* plantations in *America*, without paying the inland duties before mentioned. 21 G. 2. c. 14. And by the 12 G. 3. c. 60. and 13 G. 3. c. 44. for five years from July 5, 1772, two-thirds of the duties on importation shall be drawn back for all teas exported to *Ireland*, and the whole duties on importation shall be drawn back for all teas exported to the said plantations.

12. And no seller or dealer shall receive out of the warehouse, less than one hundred weight of each sort at one time; except where the importation and delivering in shall be in less quantities, or where the same shall be sold in lots or parcels less than a hundred weight, 10 G. c. 10. f. 34.

13. And the warehouse keeper and officer appointed by the commissioners of the inland duties shall each of them keep a book, wherein they shall enter an account of all coffee, tea, and cocoa nuts brought into and carried out of the warehouse, and the day and time when, and how much was delivered for home consumption, and how much for exportation, and the names of those for whom it was delivered out; and shall every six weeks, or oftner if required, transmit an account thereof in writing and

on oath to the respective commissioners, with an account how much is remaining in the warehouse: Which said commissioners shall in one month appoint a person to inspect the books and warehouses, and examine the accounts; and if it shall appear that any was otherwise delivered out, or before payment of the duties on such coffee and tea as were sold for home consumption, or giving security for what was delivered for exportation, the warehouse keeper and officer respectively offending shall forfeit 100l, and be disabled to hold any publick office. 10 G. c. 10. f. 29.

Who shall be deemed a dealer in coffee, tea, and chocolate.

14. Every person who shall keep a publick house, shop, cellar, or other warehouse, for selling of brandy or other spirituous liquors, and shall have in his custody any coffee, tea, chocolate, or cocoa nuts above six pounds weight, shall be deemed a dealer in the said commodities. 11 G. c. 30. f. 4.

Licence for retailing.

15. No person shall be permitted to sell or retail any coffee, chocolate, sherbet, or tea, without licence first had by order of the general sessions of the peace in the respective counties (certificate being first shewed, that he hath given good security for payment of the duties to the king); or from the chief magistrate of the place in whose jurisdiction he shall inhabit. And no licence shall be granted to any retailer, till such security shall be given by recognizance or otherwise: For which licence, recognizance, and security, 12d shall be given, and no more, for the payment of the excise. And persons selling without such licence and security, shall forfeit 5l a month. 15 G. 2. c. 11. f. 15.

Houses of manufacturing and sale to be entered.

16. Every druggist, grocer, chandler, coffee-house keeper, chocolate-house keeper, and other person selling or dealing in coffee, tea, and cocoa nuts, or making or selling chocolate, either by wholesale or retail, shall before he take any the said goods into his possession make entry in writing of all storehouses, shops, rooms, and other places intended to be used by him, at the office for the division; on pain of forfeiting 200l, and the said goods found therein, with the canisters, bags, vessels, and other package. 10 G. c. 10. f. 10.

And no entry of any shop, warehouse, room, or utensil for carrying on any trades aforesaid, shall be deemed a legal entry, unless made in the name of the real owner of, and trader in such shop; and the person who acts as visible owner of such place, or principal manager in such trade, shall be deemed the real owner and trader, and consequently

quently liable for any stock found there, or for not making entries, or other offences. 18 G. 2. c. 26. f. 8.

And none of the said goods shall be offered to sale but in places entred, or in a warehouse to be approved of by the commissioners; on pain of forfeiting the same and also 10l. 10 G. c. 10. f. 14. 12 G. 3. c. 46. f. 6.

17. No coffee, tea, cocoa nuts, or chocolate shall be brought into any such shop or other place, without first giving notice thereof to the officer of the division, and leaving with him a certificate signed by the officer of the division from whence they were brought, that the duties on such coffee, tea, and chocolate have been paid, or that they have been condemned as forfeited; and in case of bringing in of cocoa nuts, that they have been entred with the officers of the customs, or were condemned as forfeited; and expressing the quantity and quality, and where the duties were paid, or at what port the customs and duties were paid for the cocoa nuts, or were condemned; on pain of forfeiting the same and treble value, with the canisters, bags, and other package. 10 G. c. 10. f. 11.

Notice of bringing in.

18. And where any of them shall be sold in the said entred places, above the weight of 6lb. the officer shall, on request of the seller, give to the buyer a certificate signed by him, expressing the quantity, and the names of the buyer and seller, and that the duties have been paid, or that the cocoa nuts have been entred with the officers of the customs, or that they have been condemned as forfeited; which certificate shall be left with the officer of the division to which the same is intended to be carried, to prevent the seizing thereof. 10 G. c. 10. f. 15.

Permit when sold to the retailer.

19. The officers shall be permitted at all times by day, to enter all warehouses, shops, and other places, and by weighing, gaging, or otherwise, to take an account of the quantity and sorts; in the weighing whereof the owner shall be assisting, and keep just weights and scales; on pain of 100l. 10 G. c. 10. f. 12. 10 G. 3. c. 44. f. 1.

Officers to enter and survey.

20. And if any officer shall have cause to suspect, that any the said goods shall be concealed, if it is within the bills, then on oath made before two commissioners, or elsewhere, before one or more justices, setting forth the ground of his suspicion, they may by warrant authorize such officer by day or night, but if in the night then in presence of a constable, to enter the place suspected, and seize and carry away the same (if found) as forfeited, together with the bags, canisters, and other package; and if

Search for goods concealed.

any

any person shall obstruct such officer, he shall forfeit 100 l. 10 G. c. 10. f. 13.

And if any seller or dealer shall conceal any the said goods, he shall forfeit the same and treble value, with the canisters, bags, and other package; and if any person shall obstruct the officer in seizing any of the said goods by virtue of this or any future act, or after seizure shall endeavour to rescue the same, or break or damage the vessels or package; he shall forfeit 50 l. f. 39, 40.

And by the 11 G. c. 30. Two commissioners or any justice of peace, on complaint by an officer on oath, that he suspects any dealer not to have made true entries, setting forth in such oath the causes of his suspicion, may summon such suspected person to appear with his books, and examine him on oath touching the truth of his entry; and if he shall refuse or neglect to appear, or to make such oath, he shall forfeit 20 l. f. 12.

True manufac-
turing of coffee.

21. No person shall mix with coffee, to increase the weight, any butter, grease, water, or other materials; on pain of 100 l; and if any dealer shall knowingly buy or sell any so mixed, he shall forfeit 100 l. 11 G. c. 30. f. 9.

And the commissioners may appoint houses and proper materials for roasting of coffee berries, and officers to attend them, and one person at each house well skilled in roasting of coffee; to which all persons may resort to have their coffee berries roasted, bringing a certificate from an officer that the duties have been paid, or that it hath been condemned as forfeited; for the roasting of which coffee shall be paid 8 s a hundred weight. 10 G. c. 10. f. 31.

But the sellers and dealers may if they think proper, send their own roasters; who shall be permitted to roast the same, paying 3 s a hundred weight. 10 G. c. 10. f. 32.

And during the continuance of such roasting houses, no coffee berries shall be roasted, burned, or dried, but in one such house; on pain of forfeiting the same, and 5 s a pound. 10 G. c. 10. f. 33.

And if any officer or roaster shall neglect or refuse to attend such house, he shall forfeit 10 l for the first offence, and 20 l for the second, and be incapable to hold any office in the revenue. 10 G. c. 10. f. 34.

True manufac-
turing of tea.

22. No dealer in tea, or manufacturer, or dyer thereof, shall adulterate it, or alter, or manufacture it with any drug, or mix it with any leaf or other ingredient; on pain of forfeiting the same, and 100 l. 11 G. c. 30. f. 5.

And

And by the 4 G. 2. c. 14. If any dealer in tea shall dye, or manufacture, any sloe leaves, liquorice leaves, or the leaves of tea that have been used, or any other leaves in imitation of tea, or shall mix or colour such leaves of tea, with *terra japonica*, sugar, molosses, clay, logwood, or any other ingredients; or shall offer to sale, or have in his custody any such leaves in imitation of tea, or any such stained leaves of tea mixed with any ingredient; he shall forfeit for every pound weight thereof 10 l.

f. 11.

23. The maker of chocolate, if within the bills, shall weekly, and elsewhere every six weeks, make entry in writing at the next office, of all chocolate made by him within that time, setting forth the weight thereof, on pain of 50 l. Which entry shall be upon oath of the maker or his chief workman, according to the best of his knowledge and belief, to be administered within the bills by such officers as the commissioners shall appoint, and elsewhere by the collectors and supervisors. But no person shall be obliged to go further to make entry, than the next market town. 10 G. c. 10. f. 17.

True manufacturing and stamping of chocolate.

And he shall in one week within the bills, and elsewhere in six weeks after entry, clear off the duties, on pain of 50 l. besides the duty; and he shall, after default in payment, sell or deliver none out till the duty is paid, on pain of treble value. 10 G. c. 10. f. 18.

And he shall at the time and place of entry produce the same so made (on pain of 20 s for every pound not produced); which chocolate shall be tied up with thread in papers of one pound, half a pound, or a quarter of a pound each, and not more or less; which shall be marked or stamped by the officers. 32 G. 2. c. 10. f. 16.

And if any person shall sell chocolate in any less quantity than a quarter of a pound; or shall sell and deliver any chocolate not being duly marked or stamped; or not inclosed and tied up with the identical piece of thread directed to be used in tying up the same before it was stamped; or shall sell and deliver any chocolate, whereof the thread and stamped label inclosing the same shall have been broken or opened; he shall forfeit 20 l. f. 17.

And if any person shall counterfeit the said stamp, or shall knowingly sell any chocolate with a counterfeit stamp; or shall, on chocolate, for which no entry hath been made, nor the duties paid, fix any paper with the stamp on; he shall forfeit 500 l, and be committed to the

next

next county gaol for twelve months. 10 G. c. 10. *f.* 22.
11 G. c. 30. *f.* 13.

And if any stamped chocolate shall be damaged, the owner may in presence of an officer open it, and deliver the stamps to the officer, and work it over again with fresh cocoa nuts, and have it restamped, paying duty for what is added. 11 G. c. 30. *f.* 14.

But on reworking chocolate, proof shall be made (before the commissioners within the bills, and before two justices elsewhere) that the duties for the cocoa nuts whereof it was made, and for those also which are added, have been paid, and the chocolate entred. 11 G. c. 30. *f.* 15.

Chocolate made
for private
families.

24. If any person shall be minded to make chocolate for his own family, and not for sale, and shall give notice thereof under his hand to the officer of the division, three days before he begin to make, in which notice shall be specified the quantity of cocoa nuts designed to be made into chocolate, the name of the person to be employed in the making, and the place where; in such case the officer shall give a permission under his hand for making the same, and the place shall not be liable in respect thereof to be surveyed. 10 G. c. 10. *f.* 23.

And the person for whom it is made, shall in three days after finishing, make entry on oath with the officer, of the whole quantity then made by virtue of such permit, and bring the same wrapt up as before, to have it stamped, and shall pay the duty; and in default thereof, shall forfeit the same, and treble value. *f.* 24.

And no person shall be permitted to make into chocolate for his own private use, less than half a hundred weight of cocoa nuts at a time. *f.* 25.

Penalty of re-
tailing the same
without a per-
mit, or pedlars
with one.

25. And if any person shall offer any tea to sale, not having a permit; or if any pedlar, or other trading person, going from town to town, or other mens houses, and trading either on foot, or with any horse or other cattle, or otherwise, shall offer any such tea to sale, altho' he have a permit; the person to whom it is offered to sale, may seize and detain the same and carry it to the next warehouse belonging to the customs or excise, and bring the person before a justice of the peace to be by him committed to prison, and prosecuted for the penalties incurred for such offence; and such tea may be prosecuted in the name of the person who stopped or seized the same, in like manner as if it had been seized by an officer. 9 G. 2. c. 35. *f.* 20.

And

And none of the said goods above six pounds weight, shall be removed or carried from one part of the kingdom to another, without a permit signed by an officer, signifying the names and places of abode of the buyer and seller, and the quantity and species of the goods, and that the duty hath been paid, or the cocœa nuts entred as aforesaid, or that they have been condemned as forfeited; on pain of forfeiting the same, together with the canisters, bags, or other package: Which permit shall be left with the officer of the division to which the same shall be carried, to prevent the seizure thereof; in which permit shall be expressed the time for which it shall continue in force. 10 G. c. 10. f. 16.

And for the better distinguishing the species of the tea to be contained in the said permit, all dealers in and sellers of tea, who shall receive into their custody any Bohea, Congo, Souchong, or Pekoe tea, shall mark every canister, bag, jar, tub, box, cask, or other package containing the same, with the word *Black*; and shall mark every canister, bag, or other package in which they shall keep any other kind of tea, not being Bohea, Congo, Souchong, or Pekoe tea, with the word *Green*. And for avoiding all doubts concerning the said two kinds of tea distinguished by the names of *Black tea* and *Green tea*, it is hereby declared, that by the term *Black tea* is meant all such teas as are usually known by the name of Bohea, Congo, Souchong, or Pekoe tea; and that by the term *Green tea* is meant all teas not being such Bohea, Congo, Souchong, or Pekoe tea. And the permit granted by such officer shall distinguish the same accordingly. 12 G. 3. c. 46. f. 1, 2, 5.

And the officer of excise who shall survey and take account of the stock of tea at the warehouses, storehouses, shops, cellars, or other places, of persons being dealers in and sellers of tea, shall keep a separate and distinct account of the Black tea and Green tea; and if he shall find any increase either of Black tea or Green tea in custody of any such dealer or seller, the same shall be taken to be made by tea for which no duty hath been paid, and privately brought in without a permit: And so much of either of the said sorts as shall be found to be so increased shall be forfeited, and seized by the officer, unless the owner shall make it appear that the increase was made by tea brought in with a permit or certificate of the payment of the duties thereof. *Id.* f. 3.

And

And if any person shall take out a permit for removing coffee, tea, or cocoa nuts, and shall not send away the goods within the time limited, nor return the permit, he shall forfeit treble value; and if there shall not appear a sufficient decrease made in the stock to answer the quantity in the permit, the officer may seize so much of the said stock as forfeited, as will answer the said quantity in the permit: But no person shall receive a permit, without the direction in writing of the person (or his servant) from whose stock the goods are to be removed; on pain of 50 l: And in default of payment, he shall be imprisoned three months. 11 G. c. 30. *f.* 10.

Account to be kept of small quantities consumed.

26. All sellers and dealers in any the said goods, and all makers of chocolate, and coffee or chocolate house keepers, who shall consume the same in small quantities under six pounds, shall keep an account of all coffee, tea, chocolate, and cocoa nuts which they shall consume in each day; and every night enter in a book an account of the gross quantities retailed by them under six pounds; and shall keep another book wherein they shall enter each parcel above six pounds, which they shall sell in each day, which shall not be removed without a permit from the officer, expressing the quantity and quality, and the name of the seller and buyer, and where it is to be carried, and that the duties were paid, or the cocoa nuts entred, or that they were condemned as forfeited; which books shall be prepared by the commissioners, and by them delivered on demand to such sellers and dealers; and when the books shall be filled up, they shall be returned to the officer upon oath of the truth of the entries; and the said book shall from time to time lie open, and be perused by the officer: And if such seller or dealer shall omit his duty in regard to the said books, he shall forfeit 100 l. 10 G. c. 10. *f.* 35.

(But by the 12 G. c. 28. No dealer in cocoa nuts shall dispose of less than 28 pounds at a time, and then shall enter in writing the name and place of abode of the person to whom sold, and on demand shall produce such account to the officer; on pain of 20 l for each pound of cocoa nuts otherwise disposed of, and of 20 l for default about the entry. *f.* 29.)

And such dealers in and sellers of tea shall in their accounts and books to be kept as aforesaid, distinguish particularly the respective quantities of each of the said sorts of Black tea and Green tea by them consumed, retailed, or sold on each day; on the like pain of 100 l as aforesaid. 12 G. 3. c. 46. *f.* 4.

27. All the said penalties and forfeitures shall be recovered and mitigated as by the laws of excise or in the courts at *Westminster*; and be employed half to the use of the king, and half to the informer. 10 G. c. 10. f. 41. 11 G. c. 30. f. 39. 4 G. 2. c. 14. f. 10. 18 G. 2. c. 26. f. 14. 24 G. 2. c. 40. f. 33.

And by the 12 G. c. 28. the penalties on the said act shall be recovered as by the laws of the customs or excise respectively. f. 33.

28. And on disputes whether the duties have been paid, the proof shall lie on the claimer, and not on the officer. Proof to lie on the claimer.

10 G. c. 10. f. 28.

29. The commissioners shall cause all tea and coffee seized in *London*, and condemned, to be sold there; and if seized elsewhere, they shall cause it after condemnation to be brought and sold in *London*. 12 G. c. 28. f. 1. Or, after having been first valued by sworn valuers, they may be sold where the commissioners shall think proper. f. 16.

But if they think fit, they may cause such tea as cannot be sold for 5 s a pound, to be burnt or otherwise destroyed; and the person making seizure, to be rewarded as they shall think proper, not exceeding 1 s 6 d for each pound of such tea. f. 3.

30. But no officer of the customs, or other person, shall be intitled to any reward for any seizure of the said goods, unless he give notice of the seizure to the next officer of excise, or supervisor, in 48 hours; who shall, on such notice, take an account of the species and quantity; nor shall such goods be removed without a permit from such officer of excise, on pain of re seizure. 12 G. c. 28. f. 6.

31. All stock and utensils found in the shops or other places aforesaid, shall be liable to the duties and forfeitures. 18 G. 2. c. 26. f. 8. Utensils liable.

V. Glafs.

1. By the 19 G. 2. c. 12. Certain additional duties are laid upon glafs imported, over and above what it shall pay by the 2 W. sess. 2. c. 4. and by the book of rates of the 12 C. 2. which shall be under the management of the commissioners of the customs. f. 2, 8. Duty on importation.

2. Moreover, there shall be paid a duty of 9 s 4 d a hundred weight upon all materials, metal, or other preparation for making of crown, plate, and flint glafs, and all

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E

white

Excise. (Glas.)

white glas; and of 2s 4d a hundred weight, upon all materials for making common bottles, and all other green glas: To be paid by the maker; and to be under the management of the commissioners of excise. *f. 4, 5, 6, 9.*

Place of making
to be entered.

3. In order whereunto, every maker of glas shall first make entry in writing at the next excise office, of his name, and of all his furnaces, pots, pot chambers, warehouses, rooms, and other places for making or keeping of glas, or of materials for making it; and if he shall use the same, without first giving notice to the proper officer, he shall forfeit 50*l.* *f. 10.*

Notice of beginning
to work.

4. And he shall, before he begin to fill any pot, give 12 hours notice in writing to the officer, of the time and hour when he intends to begin, with an account of the weight of the materials, and the species of glas to be made; on pain of 50*l.* *f. 11.*

And if the filling be not begun pursuant to such notice, the said notice shall be void. *f. 12.*

Officer to enter
and survey.

5. The officer shall be permitted at all times, by day or night, to enter into the workhouse, warehouse, or other place for making of glas; and to weigh and take account of the quantity of materials; and shall make report thereof to the commissioners or whom they shall appoint, leaving a copy (if demanded) under his hand, for the glas maker; and if he shall not leave such copy on demand, he shall forfeit 40*s.* *f. 13.*

And if any person shall obstruct any officer in the execution of his duty on this act; he shall forfeit 50*l.* *f. 16.*

Maker to keep
scales and
weights.

6. And the maker shall keep just scales and weights at the place where the glas is made, and assist the officer in weighing; on pain of 50*l.* *f. 14.*

And by the 10 G. 3. c. 44. if he shall make use of insufficient scales or weights, he shall forfeit 100*l.*: but not to be prosecuted both on this and the former act.

Entry of glas
made.

7. Every maker within the bills shall monthly, and elsewhere, once in six weeks, make entry in writing at the next excise office, of the quantities of the materials used in each making, on pain of 20*l.*: which entries shall be made on oath before the commissioners within the bills, and elsewhere before the collector or supervisor. *f. 17.*

But no maker shall be obliged to go further than the market town where it is made, or the next market town, for the making such entries. *f. 18.*

Payment of the
duty.

8. The maker, within the bills, shall in four weeks, and elsewhere in six weeks after entry, pay off the duties; on pain of double duty. *f. 19.*

9. If any pot filled with materials shall crack or break, whereby any part thereof shall become unfit for service, on proof thereof to the commissioners where such glass house shall be situated, they shall make an allowance for the same. *f.* 15. Allowance for glass spoiled in making.

10. Any person who hath paid the duty may export the glass, and have the duty drawn back; and if it shall be relanded, it shall be forfeited, or the value thereof, over and above the penalty of the bond given on exportation. *f.* 20, 21, 22. Exportation.

And no glass shall be imported into *Ireland*, other than the manufacture of *Great Britain*; on pain of forfeiting the same, and the ship, and 10 s a pound. *f.* 23.

The like penalty for exporting glass out of *Ireland*. *f.* 24.

11. The penalties to be recovered or mitigated as by the laws of excise, or in the courts at *Westminster*; and to be employed, half to the use of the king, and half to him that shall sue. *f.* 39. Power of the justices.

VI. Hops.

1. By the 9 *An. c.* 12. an additional duty of 3 d a pound is laid on all hops imported, over and above all other duties; which shall be under the management of the officers of the customs. *f.* 1, 2, 3, 4. Duty on hops imported.

And if any foreign hops shall be landed before entry and duty paid, or without warrant for landing; the same shall be forfeited, and burnt in ten days after condemnation, and the ship also shall be forfeited, and the person concerned in importing, or aiding in putting them on shore, shall forfeit 5 l a hundred weight. 7 *G. 2. c.* 19. *f.* 1.

2. And by the said act of the 9 *An. c.* 12. there shall be paid a duty of 1 d for every pound of hops grown in *Great Britain*, cured and made fit for use; the same to be paid by the owner within six months after they shall be cured and put in bags; which duty shall be under the management of the commissioners and officers of excise. *f.* 1, 5. Duty on hops grown in Great Britain.

3. In order whereunto, every person who shall plant or have growing any hops, for sale or not for sale, shall yearly on or before *Aug. 1*, give or send notice in writing under his hand, at the next office of excise, or to the officer of the district, of all the hop grounds in his possession, and of the name of the parish, township, or place, and the name of the owner or occupier; on pain of 40 s an acre. 9 *An. c.* 12. *f.* 6. Hop grounds to be entered.

Excise. (Hops.)

But such person shall not be obliged, for giving notice, to go further than the next market town. *f. 7.*

And the officer who shall receive the notice, shall in five days enter the same in a book to be kept at the office for that purpose; on pain of 40 s. *f. 7.*

Places of curing
and keeping to
be entered.

4. Also no person shall use any oast, storehouse, or other place, or any kiln for curing or keeping of hops, unless notice thereof shall have been given, on pain of 50 l. *9 An. c. 12. f. 8.*

And all hops shall in six weeks after gathering, be brought to be cured and bagged at such oasts or places notified, and no other; on pain of 5 s a pound. *f. 9.*

Officers to enter
and survey.

5. The officer shall at all times, by day or night, and if in the night in the presence of a constable be permitted on his request to enter into the oast, storehouse, or other place, used by any person for growing, curing, or keeping of hops; and if the planter or owner shall obstruct him, he shall forfeit 20 l. *9 An. c. 12. f. 15.*

Notice of bag-
ging and weigh-
ing.

6. The owners of hops, before they respectively begin to bag or weigh their hops, shall send notices in writing under their hands to the next excise office or officer, of the day and hour when they intend to begin either to bag or to weigh: which notice, as to such as shall be bagged or weighed the first week, shall be given 24 hours before; and as to every other bagging or weighing, 48 hours; on pain of 50 l. *6 G. c. 21. f. 25.*

And by the 14 G 3. c. 68. the officer shall, on pain of 5 l, weigh the bags or pockets; and shall, before the hops shall be put therein, mark on the outside of each bag or pocket the true weight or tare thereof, and also the planter's name and place of abode, together with the date of the year in which such hops were grown: And if he shall put his mark of the weight of the hops upon any bag, before he hath weighed such bags and hops therein, he shall forfeit 40 s, on conviction before one justice, by confession, or oath of one witness, by distress; half to the informer, and half to the overseers for the use of the poor. *f. 12.*

And if any person shall forge, alter, or obliterate any such mark on such bag or pocket, he shall forfeit 10 l in like manner; and in default of payment, shall be imprisoned six months, or until he shall have paid the penalty. *f. 3.*

Provided, that no person shall be prosecuted on this act, unless complaint shall be made within six calendar months after the sale of any such hops. *f. 4.*

Officer to attend.

7. And the officer shall cause an entry of the said weight to be made in his book; and shall make return thereof

whereof in writing to the commissioners or to whom they shall appoint, leaving a true copy (if demanded) of such return under his hand with the planter or owner; and if he shall neglect or refuse to leave such copy (after demand in writing, 12 G. c. 28. f. 30.) he shall forfeit 5l. 9 An. c. 12. f. 11.

8. The owners shall keep at their ousts, storehouses, and places of keeping their hops, weights and scales; and permit the officer to use them; and shall not suffer any false weights to be used; on pain of 20l. 6 G. c. 21. f. 26. Owner to keep scales and weights.

And by the 10 G. 3. c. 44. a penalty of 100l. is inflicted for false scales or weights, but the offender not to be prosecuted on both acts.

9. The owners may, if they think fit, put the hops into casks, instead of bags; giving the like notice, and being subject to the same regulations, for casking as for bagging. Hops may be put into casks instead of bags.
6 G. c. 21. f. 27, 28.

And the officer shall cause the cask to be weighed, and the weight to be marked on the cask, and also the weight of the hops therein. f. 28.

10. No person shall take any hops of foreign growth out of the bags in which they are imported, and rebag the same in *British* bagging, in order to sell or export them as *British* hops; on pain of 10l a hundred weight: And if any person shall endeavour to defraud the king of the duty, by using twice or oftner the same bag, with the officer's mark thereupon; he shall forfeit 40l. 9 An. c. 21. f. 23. Deceit in bagging.

11. No planter or owner shall (on pain of 50l) remove from his oust, storehouse, or other place, any hops, until they have been cured, bagged, and weighed, and the duties ascertained; unless where the officer after notice, shall not attend the bagging and weighing. 9 An. c. 12. f. 16. Removal before bagging.

12. If any planter or owner shall conceal any hops, to avoid the duties; he shall forfeit 20l, and the hops concealed. 9 An. c. 12. f. 17. Concealing.

13. And if any gatherer of hops, or other person, shall privately convey any hops from the place of growing, or where they shall be put in order to be cured, bagged, and weighed, with intent to defraud the king and the owner; he shall forfeit 5s. a pound. 9 An. c. 12. f. 18. Privately conveying.

14. The planter or owner shall in six months after the hops shall be cured, bagged, or weighed, pay off the duties; on pain of double duty, two thirds to the king, and one third to the informer. 9 An. c. 12. f. 14. Payment of the duties.

Adulterating
hops.

15. If any person shall mix with hops any drug or ingredient to alter the colour or scent; he shall forfeit 51 a hundred weight. 7 G. 2. c. 19. f. 2.

Using o'her
things instead of
hops.

16. No common brewer, innkeeper, or victualler shall use any broom, wormwood, or any other bitter ingredient, to serve instead of hops; on pain of 20 l. (Except the infusion of broom or wormwood into beer or ale by the retailer, after it is brewed and tunned, to make it broom or wormwood ale or beer.) 9 An. c. 12. f. 24.

Exportation.

17. Hops which have paid the duty, may be exported to Ireland. 9 An. c. 12. f. 21.

But there shall be no drawback of the duties. 6 G. c. 11. f. 40.

And no foreign hops, other than of *British* growth, shall be landed in Ireland. 7 G. 2. c. 19. f. 1.

Penalties how to
be recovered.

18. The penalties aforesaid (where not otherwise directed) shall be recovered and mitigated as by the laws of excise, and distributed half to the king, and half to him that shall sue. 9 An. c. 12. f. 26. 24 G. 2. c. 40. f. 33.

Hops liable to
distress for the
duties and pen-
alties.

19. And all hops in the custody of any planter or owner, or person in trust for him, shall be liable to the duties in arrear, and to the penalties; in the same manner as if the debtor or offender were the lawful owner. 9 An. c. 12. f. 19.

Cutting hop-
binds,

20. If any person shall unlawfully and maliciously cut any hop-binds growing on poles, in any plantation of hops; he shall be guilty of felony, without benefit of clergy. 6 G. 2. c. 37. f. 5, 6.

Which offence is treated of more at large in the title *Back Act*.

VII. Leather.

Duty on leather
imported.

1. By the 4 W. c. 5. and 9 An. c. 11. and 10 An. c. 26. certain additional duties are laid on all hides, skins, vellum and parchment imported, over and above what they are charged in the book of rates; which shall be under the management of the commissioners of the customs.

And after the duty shall be paid on importation, the officers of the customs shall cause every hide or skin to be marked, to denote the payment of the duty. 9 An. c. 11. f. 6.

But by the 9 G. 3. c. 39. Raw or undressed hides of steers, cows, or any other cattle (except horses, mares, and geldings), and raw or undressed skins of calves and goats, may be imported from Ireland, or any of the British American colonies, duty free, for 5 years.

And

Excise. (Leather.)

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And by the 15 G. 3. c. 32. Raw or undressed goat skins may be imported from any place for five years.

2. By the said acts of 9 An. c. 11. and 10 An. c. 26. Duty on leather dressed in Great Britain. certain duties are imposed on hides and skins, tanned, tawed, or dressed in *Great Britain*; and on vellum and parchment made in *Great Britain*; as follows:

On all tanned hides 1½ d a pound.

Calf, kips, hogs, and dog skins tanned 1½ d a pound.

Goat skins tanned with shomack, or otherwise to resemble *Spanish* leather, 4 d a pound.

Sheep skins tanned for roans after the nature of *Spanish* leather, 2 d a pound.

Sheep skins and lamb skins tanned for glovers and bazils 1½ d a pound.

(And by the 9 G. 3. c. 39. Seal skins tanned or tawed, 1½ d a pound.)

Tanned skins not before charged 30 l in the hundred, according to the real value.

All the above to be paid by the tanner.

Horse hides dressed in allom and salt or meal, or otherwise tawed, 1 s 6 d a hide.

Hides of steers, cows, and all other (except horse hides) dressed in allom and salt, or meal, or otherwise tawed, 3 s a hide.

Calve skins and kips dressed in allom and salt or meal, or otherwise tawed, 1½ d a pound.

Slinks so dressed or tawed, with the hair on, 3 s a dozen.

Slinks so dressed or tawed, without hair, 1 s a dozen.

Dog skins so dressed or tawed, 1 s a dozen.

Buck and doe skins (except what paid the duty on importation) dressed in allom and salt or meal, or otherwise tawed, 6 d a pound.

Kid skins so dressed or tawed (except what paid the duty on importation) 1 s a dozen.

Goat skins so dressed or tawed, 2 s a dozen.

Beaver skins so tawed, 2 s a dozen.

Sheep skins and lamb skins so dressed or tawed, 1½ d a pound, and no more, altho' they may have been dipped or steeped in the tanner's wooze made of bark or shomack before dressing. (3 G. c. 4. f. 13.)

All other tawed skins not before charged, 30 l for every 100 l value.

To be paid by the tawers or makers.

For hides and skins dressed in oil, 6 d a pound.

Deer, goat, and beavers skins, dressed in oil, 6 d a pound.

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Calve skins dressed in oil, 8d a pound.

Sheep and lamb skins dressed in oil, 3d a pound.

All skins dressed in oil, not before charged, 15 l in the hundred, according to the real value.

To be paid by the oil leather dressers.

For all vellum made in Great Britain, 3s a dozen.

Parchment made in Great Britain, 1s 6d a dozen.

But such small pieces as have been commonly called pates and tails, and are tanned after they are cut off from the hides, shall not be charged with the duty by weight, but with the duty *ad valorem*; and the same need not to be marked as is hereafter directed. 9 An. c. 11. f. 46.

What is meant
by hides tanned,
dressed in oil,
and tawed.

3. By *tanned* hides or skins, or pieces thereof, are meant only such as are tanned in wooze made of the bark of trees or shomack; and by hides and skins *dressed in oil*, are meant such as are made into leather in oil, or with any materials whereof the chieft ingredient shall be oil; and by *tawed* hides or skins, are meant such as are dressed or made into leather in allom and salt, or meal, or other ingredients properly used by the tawers of white leather. 9 An. c. 11. f. 3.

Who shall be
deemed tawers
or dressers.

4. Collar makers, glovers, bridle cutters, and others who dress skins or hides, or pieces thereof, in oil, allom and salt, or meal, or other ingredients, and who cut and make the same into wares, shall be accounted tawers or dressers. 2 An. c. 11. f. 28.

Duty *ad valorem*
how be to ascer-
tained.

5. The value of the said hides and skins which are to pay *ad valorem*, shall be as they are worth to be sold at the next market, without respect to the duty; and the collector shall receive the duties, on the oath of such tanner, tawer, or dresser. 9 An. c. 11. f. 14.

No leather to be
twice charged.

6. Any hide or skin which hath once paid the duty, shall not be charged under any other denomination. 9 An. c. 11. f. 3.

Officers for these
duties.

7. The commissioners of the treasury shall appoint commissioners of these duties; who shall have the same power as the commissioners of the excise. 9 Ann. c. 11. f. 13, 38.

Places of work-
ing to be entered.

8. Tanners, tawers, curriers, or dressers of hides or skins, and makers of vellum or parchment, shall give notice in writing to the officer, of their names and places of abode, and of their tanhouses, yards, workhouses, mills, or other places, where they intend to tan, taw, or dress hides or skins, or make vellum or parchment, before they use the same; on pain of 50 l. 9 An. c. 11. f. 15.

And if any person shall not make such entry, or shall use any private tan yard, workhouse, pit, fat, mill, or place, he shall forfeit 20 l; and the goods found in such private tan yard or place not entred, or the value thereof, shall also be forfeited. *9 An. c. 11. f. 17.*

9. The officers at all seasonable times, in the day time, may enter into any tan yard, workhouse, warehouse, mill, or other place; and if the owner or occupier shall refuse him entrance, he shall forfeit 10 l. *9 An. c. 11. f. 17.* Officers to enter and survey.

10. The said tanners and others shall give notice to the officer, of their places for drying and keeping of hides or skins, vellum or parchment, and they shall give two days notice in writing to the officer, before they take the said goods out of the mill, wooze, liquor, oil, or other materials, in order to be dried; and they shall permit the officers to take an account; and shall in two days after the taking out of the wooze, mill, liquor, or other materials, and before the carrying away of the said goods from the place of drying, make entry with the officer of the number and quality, and verify the same on oath, to be administered by any justice of the peace, or collector or supervisor; and they shall not remove any of the said goods, from the place of drying, until the duty be first charged, entred, and marked. *9 An. c. 11. f. 16.* Notice of removing to the place of drying.

And if any person shall not send such notice of taking the goods out of the wooze or other materials, or not make due entries, or remove any the said goods contrary to this act; he shall forfeit 20 l; and also such goods unlawfully removed, or the value thereof shall be forfeited. *f. 17.*

11. And if any tanner or other such person shall conceal any hide or skin, vellum or parchment, or any part thereof; he shall forfeit 20 l, and also the goods concealed, or the value thereof. *9 An. c. 11. f. 17.* Concealing to avoid the duty.

12. Tanners, and other the said persons, shall keep scales and weights; and sworn officers shall be appointed, for the weighing and other matters to be performed at every such yard or dressing place. *9 An. c. 11. f. 18.* Tanners to keep scales and weights.

And if he shall not keep just scales and weights, or shall not permit his hides or skins to be weighed, or neglect or refuse to bring the scales, or to assist at the weighing; he shall forfeit 50 l. *f. 26.*

And by the 10 G. 3. c. 44. if he shall use false or insufficient scales or weights, he shall forfeit 100 l: but not to be prosecuted both on this and the former act.

13. Tanners, and other the said persons, shall before any the said goods be removed from the place of dressing, drying, Duty to be ascertained before removal.

- drying, or keeping, give two days notice in writing to the officer (for giving of which notice he shall not be obliged to go further than the next market town); and shall permit the officer to weigh the goods chargeable by weight, and bring the scales, and assist in weighing; and shall permit the officer to take an account of the number and quality of the goods to be charged by tale; and shall ascertain the value of such goods as are to be charged *ad valorem*, by his oath to be taken before the said officer, or a justice of the peace. 9 An. c. 11. f. 19.
- Charge by the officer.** 14. And after the duties are ascertained by weight, tale, or value respectively, the officer shall enter the same in a book, and make return thereof to the commissioners or whom they shall appoint, leaving a true copy thereof under his hand, with such tanner or other person. 9 An. c. 11. f. 20.
- Leather to be marked.** 15. Immediately after the duty shall be ascertained, and entry thereof made, the officer shall cause every hide or skin, and every piece of a hide or skin, and all vellum and parchment, to be marked. 9 An. c. 11. f. 21.
- In what part to be marked.** 16. And if such tanner or other person shall desire the mark to be made, on any particular part of the hide or skin; the officer shall mark it accordingly. 9 An. c. 11. f. 22.
- Removing before marked.** 17. And if any tanner, or other such person, shall remove from his yard or drying place any the said goods, before the duties shall be charged, and before they be marked; or if any buyer shall carry away the same before they be marked; he shall forfeit 50 l; and the said goods so unlawfully sold or removed, shall also be forfeited. 9 An. c. 11. f. 26.
- Counterfeiting the stamp.** 18. And if any person shall counterfeit the stamp, or knowingly sell any the said goods with a counterfeit stamp; he shall be guilty of felony without benefit of clergy. 9 An. c. 11. f. 44.
- Leather stamped to be kept separate.** 19. And to prevent frauds between the officers and tradesmen, all tanners, tawers, and dressers of hides, skins, vellum, and parchment, shall keep those which have not been stamped, from those which have, and also those which have been last stamped, from those which have been stamped before, for 24 hours within the bills, and for two days elsewhere; unless they shall have sooner been weighed and taken account of by the surveyor or supervisor: on pain of 10 l. 5 G. c. 2. f. 10.
- And not to be removed till after 24 hours.** 20. And they shall not remove the same for 24 hours from the stamping thereof, unless the same shall sooner have

have been weighed by the supervisor or surveyor, that so they may have an opportunity to re-weigh the same after the inferior officers: And if any additional weight shall be found; the said hides, or skins, and pieces thereof, shall be charged accordingly. And if such tanner, tawer, or dresser shall remove, or cause or suffer the same to be removed contrary hereunto; he shall forfeit 20 l. 5 G. 3. c. 43. f. 21.

And he shall keep scales and weights for such re-weighing; and bring the hides and skins and pieces thereof to the scales; and assist the surveyor and supervisor in re-weighing, and in examining from time to time the depending stock of such tanner, tawer, or dresser; on pain of 50 l. f. 22.

21. Persons within the bills of mortality shall pay off ^{Payment of the duties.} the duties in 14 days to the commissioners, and elsewhere in six weeks to the collectors, after the said goods shall be marked. 9 An. c. 11. f. 23.

But no person shall be obliged, for payment of the duties, to go farther than the next market town. f. 24.

And persons not paying as aforesaid shall forfeit double duty; and shall not deliver out any of the said goods until the duty be paid, on pain of double value. f. 25.

22. Every tanner, and other such person, shall once in three months (if demanded) make an account with the officer, of the goods taken out of the wooze or other ingredients, and of his entries thereof, and balance the said account by the goods which have been charged, and those which are in his possession unmarked and uncharged; on pain of 50 l. 9 An. c. 11. f. 27. ^{Tanners to balance accounts with the officers.}

23. On exportation of hides or skins, tanned, tawed, ^{Exportation.} or dressed, and marked, and of boots, shoes, gloves, or other manufactures made of leather, chargeable for the duty by weight; a drawback shall be allowed of two thirds of the duty. 9 An. c. 11. f. 39. 12 An. f. 2. c. 9. f. 65.

Except that for tanned leather manufactured into boots, shoes, gloves, and other wares; a drawback of 1¹/₂ d for a pound weight, shall be allowed in lieu of the said two thirds of the duty. 12 An. f. 2. c. 9. f. 64.

And a drawback of 1 d for a pound weight of seal skins tanned or tawed, shall be allowed in lieu of any other drawback. 9 G. 3. c. 39.

24. Any two justices residing near, may hear and de- ^{Penalties how recoverable.} termine offences; who shall on information or complaint in three months after seizure made, or offence committed, summon the party accused, and the witnesses, and on appearance

pearance or contempt of the party (on proof of notice given) shall examine witnesses on oath, and give judgment, and issue warrants for levying the pecuniary penalties by distress and sale (if not redeemed in six days). 9 *An. c. 11. f. 36.*

Mitigation.

25. And they may mitigate the penalties, the charges of the officers being always allowed over and above the mitigation; and so as the mitigation do not reduce the penalties to less than one fourth part, over and above the charges. 9 *An. c. 11. f. 37.*

Appeal.

26. Persons aggrieved may appeal to the next sessions, who may determine the same, and issue warrants for levying the penalties. 9 *An. c. 11. f. 36.*

Certiorari.

27. And no certiorari shall be allowed. 9 *An. c. 11. f. 47.*

VIII Linen cloth, silks, and cottons.

Duty on importation.

1. By the 10 *An. c. 19.* and the 12 *An. f. 2. c. 9.* There shall be paid for all chequered and striped linens, and upon all linens printed, painted, stained, or dyed, after the manufacture, or in the thread or yarn, in any foreign parts, which shall be imported, and may lawfully be worn, over and above other duties, 30^s for every 100^l value; which shall be under the management of the commissioners of the customs.

Except lawns, striped or chequered linens, being all white, and neckcloths striped at the end only, and also barras, or packing canvas, and buckrams. 12 *An. f. 2. c. 9. f. 5.* 12 *An. f. 2. c. 19.*

And after the duty is paid, the said printed linens imported shall be stamped by the officers of the customs. 10 *An. c. 9. f. 68.*

And by the 7 *G. 3. c. 28.* certain additional duties on importation are imposed; viz. For every ell of linen cloth or sheeting above one yard wide (except Flanders Holland cloth) 3^d; and for every ell of linen cloth called Drilling, 3^d.

And by the 7 *G. 3. c. 58.* for every ell of foreign linen called Packing canvas, Spruce Elbing, or Queensborough canvas, one farthing; for every ell of Dutch barras and Hessian canvas, one halfpenny; and for every yard of foreign lawn bleached in Holland, commonly called Holland whited lawn, one penny.

2. By

2. By the 10 *An. c.* 19. and the 12 *An. st.* 2. *c.* 9. Home duties. over and above the duties payable on the importation of any of them, there shall be paid, for all *linen* stuffs printed, stained, painted, or dyed in *Great Britain*, 3d a yard in length, reckoning yard wide.

For all *silks* printed, stained, or painted in *Great Britain*, (*silk handkerchiefs* excepted) 12 d a yard in length, reckoning half a yard for the breadth. (And by the 7 *G.* 3. *c.* 47. Whereas doubts have arisen whether ribbands and silks so printed, stained, or painted, being less than half a yard in breadth, are within the meaning of the said acts; it is declared, that all ribbands and silks printed, stained, or painted in *Great Britain*, tho' less than half a yard in breadth, are within the meaning thereof, and liable to the said duties, according to the proportions in which such ribbands and silks are made. *f.* 6.)

And for all *silk handkerchiefs* so printed, stained, or painted in *Great Britain*, 4d a yard square.

And for all *callicoes* printed, stained, painted, or dyed in *Great Britain*, 6d for every yard in length, reckoning one yard wide, or within one eighth thereof.

Except such callicoes, linens, and fustians as shall be dyed throughout of one colour only, and stuffs made of woollen, or whereof the greatest part in value shall be woollen.

And by the 14 *G.* 3. *c.* 72. for all *cottons* wholly made of cotton spun in *Great Britain*, printed, stained, painted, or dyed with any colour or colours, 3d a yard in length, reckoning yard wide.

3. But it is to be observed, that such painted or stained *callicoes* cannot be of use for wearing apparel, and therefore the printing or staining of them must be chiefly in order for exportation; for by the 7 *G.* 1. *c.* 7. it is enacted, that no person shall use or wear in any apparel, any printed, painted, stained, or dyed callico; on pain of 5l to the informer, on conviction on the oath of one witness before one justice; who shall, on information on oath in six days after the offence, summon the party, and upon his appearance or contempt examine the matter, and on proof by confession, or oath of one witness determine the same, and on conviction cause the penalty to be levied by distress and sale, rendering the overplus (charges of distress and sale being first deducted): Provided that persons aggrieved may appeal to the next quarter sessions, giving fix days notice. *f.* 1.

And if any person shall offer the same to sale, or any household furniture made up of or mixed therewith, unless for

for exportation; he shall forfeit 20 l. half to the informer, and half to the poor of the parish or place where the offence shall be committed, to be recovered in the courts at *Westminster*; with full costs, on prosecution in six months; and if he is a steward or other officer of a corporation, he shall also forfeit his office. *f. 2, 4.*

And no person shall use the same in any household furniture, on like pain of 20 l. *f. 3.*

But this shall not extend to calicoes made up in household furniture before *Dec. 5, 1722.* *f. 6.*

Nor to calicoes dyed all blue. *f. 11.*

But the same shall extend to stuff made of cotton, or mixed therewith, printed or painted; and to callico chequered or striped; and to callico stitched or flowered in foreign parts with any colour (muslins, neckcloths, and fustians excepted). *f. 10.*

But it shall be lawful to use stuff made of linen yarn and cotton wool manufactured and printed or painted in Great Britain, provided the warp thereof be entirely linen yarn. *9 G. 2. c. 4.*

Observation as to
cottons.

4. By the *14 G. 3. c. 72.* Whereas doubts have arisen, whether stuffs wholly made of raw cotton wool within this kingdom ought not to be considered as *calicoes*, and as such be liable to the like duties, penalties, and prohibitions; it is enacted, that no greater duty shall be paid for the same than 3 d a yard as aforesaid, and that any person may use the same in apparel or otherwise. *f. 1, 2.*

And in every piece thereof shall be wove in the warp in both selvages three blue stripes, each stripe of one thread only; the first of which stripes shall be the first or outermost thread, the second of the said stripes shall be the third thread, and the third of the said stripes shall be the fifth thread: and each piece shall be stamped at each end with a stamp to be provided by the officers of excise; and instead of the word *callico*, which stands for foreign calicoes, each piece shall be marked with the words *British manufacture.* *f. 3.*

And if any person shall expose to sale any stuffs wholly made of cotton, and printed, painted, stained, or dyed (muslins, neckcloths, and fustians excepted), wherein such mark shall not be woven; he shall forfeit the same, and 50 l for each piece. *f. 4.*

(Provided always, that nothing in this act shall extend to cotton velvets, velverets, or other fustians, not manufactured in Great Britain. *f. 5.*)

And if any person shall counterfeit such stamp, or knowingly sell any such stuffs with a counterfeit stamp;

he shall be guilty of felony without benefit of clergy.
f. 8, 10.

And if any person shall import any callicoes, muslins, or other goods or stuffs made of linen yarn only, or of linen yarn and cotton wool mixed, or wholly of cotton wool, wherein shall be wove in the selvedge any such blue stripe; he shall forfeit the same, and 10 l for each piece. *f. 9.*

And upon oath made by any person, that he hath reason to suspect, that any printed, painted, stained, or dyed stuffs, wholly made of cotton, for which a duty ought to have been paid, are in the custody or possession of any draper or other person for his use, without having thereupon such stamps or marks as aforesaid; two commissioners within the bills, and two justices elsewhere, shall issue their warrant to any officer of the said duties, with the assistance of a constable, in the day time, to search for the same, and to open doors, trunks, chests, and package, and to seize such goods, and bring them to the next office for the said duties. *f. 11.*

One moiety of the penalties and forfeitures on this act shall be to the king, and the other moiety to him who shall sue. *f. 12.*

And if any question shall arise, whether any of the said stuffs wholly made of cotton were manufactured in *Great Britain*; the proof shall lie on the owner, and not on the prosecutor. *f. 14.*

5. Every such printer, painter, stainer, or dyer shall give notice in writing at the next office, of his name and place of abode, and where he intends to work; on pain of 30 l. *10 An. c. 19. f. 71.*

Houses to be entered.

And by the 1 G. 2. c. 36. Where any person shall take upon him to print, paint, stain, or die any silks, linens, or stuffs at any other place than the place of his usual residence or exercise of his trade; he shall first make entry with the officer of the division, where he intends to do the same, and pay down the duties, on pain of 50 l; and also the said goods shall be seized and forfeited. *f. 21.*

6. The officers shall at all times by day or night, and if by night in presence of a constable, be permitted on request to enter such person's house, workhouse, drying place, warehouse, field, or other place used by him, and take an account, and shall make thereof a report in writing to the commissioners or to whom they shall appoint, leaving a copy if demanded, under his hand; and if he shall make default in leaving such copy (after demand in writing,

Officers to enter and take account.

writing, 12 G. c. 28. f. 30.) he shall forfeit 40s. 10 An. c. 19. f. 75.

Obstructing the officer.

7. And none of the said persons shall obstruct the officer in execution of his duty; on pain of 20l. 10 An. c. 19. f. 78.

Entry of goods made.

8. Every such printer and other person, shall once in six weeks make entry in writing at the next office, on oath before the collector or supervisor, of all such goods by them made, containing the kinds and quantity, and the names and places of abode of the owners (if they are not their own); on pain of 50l. 10 An. c. 19. f. 72.

But no person shall be obliged to go to make entry, further than the next market town. 10 An. c. 19. f. 73.

Officer may charge for goods missing.

9. If the officer shall miss any quantity of the said goods, whereof he had taken an account in his last survey, and shall not on reasonable demand receive satisfaction what is become of the same; the officer may charge such person with the duties of the goods so missing, as if they were printed, painted, stained or dyed. 10 An. c. 19. f. 77.

Goods concealed.

10. And if they shall conceal any the said goods, to avoid the duty; they shall forfeit 20l. And all the silks, calicoes, linens, and stuffs found in any private workhouse, or other place whereof no notice hath been given, or the value thereof, shall be forfeited. 10 An. c. 19. f. 82.

Payment of the duties.

11. They shall, within six weeks after entry, clear off the duties; on pain of forfeiting double: and if they shall deliver out any such goods, after default in payment of the duties, before the same shall be cleared off; they shall forfeit double value of the goods. 10 An. c. 19. f. 74.

Removing before stamped.

12. And they shall not remove any the said goods, till the officer hath taken account thereof, and until each piece be stamped or marked; on pain of 20l. And the same so carried away without being marked, and found in the possession of any draper or other person for his use, for sale, may be seized or the value thereof recovered. 10 An. c. 19. f. 79.

Goods surveyed to be kept separate.

13. And they shall keep the goods which have not been surveyed, separate from the goods which have been surveyed; on pain of 5l. 10 An. c. 19. f. 81.

Search for goods unstamped.

14. And on oath by any credible person, that he hath reason to suspect, that any the said goods are in the possession of any draper or other person dealing therein, or of any other to his use, for sale, unstamped; the commissioners

commissioners within the bills, or any two justices elsewhere, may issue their warrants, requiring some officer of the said duties (with a constable) in the day time to search for the same, and to open doors, chests, trunks, and package, and to seize such goods, and bring them to the next office. 10 *An. c. 19. f. 98.*

15. And if any the said goods shall be found in any place, on land or water (except on shipboard for exportation) without being marked with a stamp or seal, denoting that the duties have been paid or charged; the same shall be forfeited, and may be seized by any officer of the customs or excise, and the person in whose custody they are found shall forfeit 50 l. 5 *G. c. 11. f. 15.* Goods found unstamped may be seized.

16. And if any person shall counterfeit the stamp, he shall be guilty of felony without benefit of clergy. 10 *Counterfeiting the stamps. An. c. 19. f. 97. 13 G. 3. c. 56.*

And if any person shall knowingly sell any the said goods with a counterfeit stamp, he shall forfeit 100 l, and be set in the pillory in some publick place two hours. *id.*

17. The said goods having paid the duty may be exported; and there shall be a drawback of the duties. 10 *Exportation. An. c. 19. f. 94, 95, 96. 12 An. f. 2. c. 9. f. 15.*

18. The penalties (except as is above mentioned in relation to callicoes) may be sued for, levied, and mitigated as by the laws of excise, or in the courts at *Westminster*; and shall be employed half to the use of the king, and half to him that shall discover, inform, or sue. 10 *Power of the justices. An. c. 19. f. 92. 24 G. 2. c. 40. f. 33.*

19. And all the utensils and instruments for printing, painting, staining, or dying such goods, in custody of any the said persons, or any other to his use, shall be liable to all arrears of the duty, and to all penalties concerning the same, in like manner as if such person were the lawful owner. 10 *Utensils liable. An. c. 19. f. 83.*

20. By the 4 *G. 3. c. 37.* (which establisheth the corporation of the English linen company for making cambricks and lawns) it is enacted, that the commissioners of excise, where there shall be a manufactory of cambricks or lawns, or of goods known under that denomination, shall appoint the supervisor or other officer to seal the same; for which they shall have such fee as the commissioners shall appoint. *f. 17, 18.* Cambricks and lawns to be marked by the excise officers.

The manufacturer to give notice in writing to the officer, of the finishing of every piece, before it is taken out of the loom; who shall seal the same at both ends; on pain that such manufacturer taking the same out of the loom without having given such notice, and having the

same sealed as aforesaid, shall forfeit 5*l*; and every such piece shall be forfeited, and may be seized by any officer of the customs or excise. *f. 19.*

And the officer, with convenient speed, after notice, shall mark, and also number each piece; and make entry in writing, in books to be provided at the expence of the manufacturer, of the number set to each piece, the length thereof, and the number of threads in the warp; on pain of 10*l*. *f. 20.*

If the officer shall mark any not made in England, or after the same is taken out of the looms; he shall forfeit 50*l* for each piece to him who shall sue, and forfeit his office, and be incapacitated to hold any other office of trust under the crown. *f. 21.*

If any person shall by bribery, or otherwise, prevail upon the officer to commit such offence, he shall forfeit 100*l*, and stand in the pillory two hours; and if he shall offer any such bribe, he shall forfeit 50*l*. *f. 22.*

And the officer shall yearly, in the month of June, transmit to the commissioners an account of all goods he shall have stamped, and a copy of the entries made; on pain of dismissal: And he, or his executors, shall deliver up the seals, on demand from the commissioners; on pain of 200*l*. *f. 23.*

Cambricks and lawns made in England, found unstamped, shall be forfeited, and may be seized by any officer of the customs or excise; and after condemnation shall be sold: And every person who shall sell or expose to sale, or have in his custody for that purpose, any cambricks or lawns made in England, unmarked, shall forfeit 200*l*. *f. 24.*

But the said goods so seized, condemned, and sold, shall not be worn in this kingdom, but exported, and not be sold but upon condition of exportation; and shall not be delivered out of the warehouse, until bond be given, to the satisfaction of the collector, in double penalty of the goods, that the same shall be exported, and not relanded. *f. 25.*

If any person shall counterfeit the seal appointed by this act; or shall import any foreign cambricks or lawns, having such counterfeit mark thereon; or expose the same to sale knowing the stamp thereon to be counterfeited; he shall be guilty of felony without benefit of clergy. *f. 26.*

All goods condemned in pursuance of this act, and all pecuniary forfeitures, (not herein otherwise directed,) shall

shall be sued for and recovered in any of his majesty's courts of record at *Westminster*, in the name of the attorney general, or of such officer as aforesaid; and be applied (after all charges deducted) half to the use of the king, and half to the officer or other person who pursuant to the directions of this act shall seize, inform, or sue.

f. 28. And if any question shall arise, where the goods were manufactured; the proof shall lie on the owner or claimer, and not on the officer. f. 31.

IX. Malt.

1. By the 12 An. st. 1. c. 2. No malt shall be imported. No malt to be imported. on pain of forfeiting the same, and the value thereof. f. 26.

And if it is brought in from *Scotland* by sea, it shall be entered at the port of landing, and pay the like duty as *English* malt; unless a certificate is produced that it hath paid the duty of 4^d a bushel in *Scotland*, and then it shall only pay 4^d more, to make it equal with the *English*: and if it is brought by land, it shall be carried through *Berwick* or *Carlisle*, and there pay in like manner; on pain of forfeiting the same or the value thereof; and if it is carried beyond *Berwick* or *Carlisle*, without entry or payment, the officers of excise may seize the same. 33 G. 2. c. 7. f. 10. 1 G. 3. c. 3. f. 6.

2. By the 12 An. st. 1. c. 2. (which is continued Duty on malt. yearly), and by the 33 G. 2. c. 7. there shall be paid by the maker for all malt made in *England* (except it be made for exportation only, 12 G. c. 4. f. 48.) a duty of 9d a bushel.

3. And every round bushel with a plain bottom, 18¹/₂ inches wide throughout, and eight inches deep, shall be deemed a legal *Winchester* bushel. 12 An. st. 1. c. 2. f. 7.

4. The said duty shall be under the management of Officers for these the commissioners and officers of excise. 12 An. st. 1. duties. c. 2. f. 3.

5. No person making malt (other than compounders) shall set up, alter, or use any cistern, using fat, utensil, or other vessel, for the wetting or steeping barley or other corn, or any kiln, floor, room, or other place for making or keeping of malt, without first giving notice

Places of making to be entered.

in writing at the next office of excise; or shall keep or use any private cistern or other vessel for the wetting his barley or corn, other than such as are known and made use of in his common malting house, on pain of 50l. 12 *An. st.* 1. c. 2. *f.* 36.

Officer to enter
and survey.

6. The officer shall in the day time be permitted, on request, to enter the house, malt house, and all other places belonging to or used by any maker of malt (*either for sale or not for sale*); and to gage all cisterns, uting fats, and other vessels used for wetting or steeping corn, and take account of the quantity; and shall thereof make return to the commissioners, or whom they shall appoint, leaving a copy with such maltster; and if any such maltster shall refuse to permit such officer, he shall forfeit 20l. 12 *An. st.* 1. c. 2. *f.* 4.

And if the officer shall refuse or neglect (after demand in writing, 12 *G. c.* 28. *f.* 30.) to leave a copy of the gage for the maker, at the time of taking the gage; he shall forfeit 40s. *f.* 31.

And by another clause in the said act, the officer shall on request be permitted, by night or by day, but if in the night then in presence of a constable, to enter the house, malt house, and other place belonging to or made use of by any maker of malt *for sale*, common brewer, innkeeper, victualler, distiller, or vinegar maker making malt, to gage and take an account of the corn wetting or wetted; and if such maker shall refuse to permit him, he shall forfeit 20l. *f.* 34.

Obstructing the
Officer.

7. And by a general clause in the 1 *G. st.* 2. c. 2. If any maker of malt for sale, shall obstruct any officer of excise, in the execution of any of the powers given him for securing the said duties, he shall forfeit 10l. *f.* 4.

Manner of
gaging.

8. The officers shall measure corn making into malt, by the gage only, and not by the bushel. 12 *An. st.* 1. c. 2. *f.* 17.

Time for mak-
ing.

9. No person shall make any barley malt (except in *June, July and August*) but that the same shall have in making thereof, that is in the fat, floor, steeping and drying three weeks at least; nor in *June, July, and August*, but that it shall have 17 days at the least (unless it be for his own house); on pain of forfeiting for every quarter 2s. half to the king, and half to him that shall sue: And the justices in sessions, and the steward in theleet, may hear and determine the same, as well by presentment of 12 men, as by accusation or information of two honest witnesses. 2 & 3 *Ed.* 6. c. 10. *f.* 2, 3, 4, 5.

10. If any person shall put to sale any malt not well trodden, rubbed, and fanned, whereby there may be conveniently fanned out of one quarter half a peck of dust or more; he shall forfeit for every quarter 20 d, half to the king, and half to him that shall sue in like manner in the sessions or leet. 2 & 3 Ed. 6. c. 10. f. 3, 4.

Dressing of malt.

11. No person (except it be for his own house) shall mingle any malt, not well made, or made of mow burnt, or spired barley, with other good malt, and after put the same to sale; on pain to forfeit for every quarter 2 s, half to the king, and half to him that shall sue in like manner in the sessions or leet. 2 & 3 Ed. 6. c. 10. f. 2, 3, 4, 5.

Mixing bad malt with good.

And the bailiffs and constables of the town where malt shall be made, or put to sale, may search the same: And if they shall find it to be evil made or mingled with evil malt, they shall with the advice of one justice cause it to be sold to such persons, and at such reasonable prices, and under the common price of the market, as to him shall seem necessary and expedient. f. 4.

12. If any corn, in any cistern, uting fat, or couch, steeping or steeped, in order to the making thereof into malt by any maltster (other than compounders) shall be found so hard, close, and compact, as it could not be, unless it had been forced together to prevent its swelling; every maltster and maker of malt (other than compounders) where the same shall be found, shall forfeit 5 s a bushel; and proof being made thereof, the same shall be conclusive evidence of the fact, and subject the maltster to the penalty. 1 G. 3. c. 3. f. 17.

Pressing malt in the cistern.

13. No maker of malt (other than compounders) shall mix corn of one wetting with corn of a former wetting; or mix any of his couches or floors, with corn of a former wetting, before the same is put on the kiln for drying: on pain of 5 s a bushel. 2 G. 2. c. 1. f. 11.

Mixing with corn of a former wetting.

14. If any dealer in malt, shall, with malt fraudulently mix any unmalted corn, or sell or expose to sale any such mixture, or shall attempt to ship off any such mixture, in order to export the same; he shall forfeit 5 s a bushel. 1 G. 3. c. 2. f. 13.

Mixing malt with unmalted corn.

15. If any maltster shall fraudulently convey, or cause or suffer to be conveyed away, from the cistern, uting fat, or other wetting place or utensil, any steeping or part of any steeping of corn making into malt; and shall mix the same with any couch or floor of other corn making into malt, which is then depending and in operation, and which hath been gaged or charged with the duty in the couch, he shall forfeit 100 l. 1 G. 3. c. 3. f. 18.

Mixing malt gaged with malt ungaged.

Concealing malt
to avoid the
duty.

Concealing malt
to avoid being
gaged in the
couch.

Allowance for
malt swelling.

16. If any maker of malt shall fraudulently conceal any malt from the view of the gager; he shall forfeit 10 s a bushel. 12 An. ft. 1. c. 2. f. 35.

17. If any maltster shall fraudulently convey, or cause or suffer to be conveyed away, from the cistern, uting fat, or other wetting place or utensil, any steeping or part of any steeping of corn making into malt, so that no gage thereof can be taken in the couch by the officer; he shall forfeit 100 l. 1 G. 3. c. 3. f. 18.

18. Out of every 20 bushels charged by the gager, there shall be an allowance made of malt charged in the uting fat, cistern, or other vessel, wherein the same shall be found wetting or steeping, or on the floor within 30 hours after the same shall be thrown out of such vessel,—of four bushels, for the difference between the quantity when it is wet and swoln, and when it is converted into dry malt. 12 An. ft. 1. c. 2. f. 20.

And if any corn that hath been steeped be found working or growing upon the floor before it is put upon the kiln, which when dried will not answer so great a quantity from the floor as from the cistern; out of every 20 bushels so charged upon the floor, there shall be allowed to the maker of the malt which shall be gaged upon the floor, after it hath been thrown out of the cistern 30 hours or more, and before it shall be dried, ten bushels, for the difference between the quantity when it is making upon the floor, and when it is dried. 12 An. ft. 1. c. 2. f. 28.

But if any maltster shall not wet or steep his barley or other corn, in the cistern, uting fat, or other vessel, so as the same be covered with water, and continue so covered, for 40 hours before he take the water from it; he shall not be intitled to the said allowance of 4 bushels in every 20 as aforesaid. 33 G. 2. c. 7. f. 64.

And in order that it may be ascertained when such corn is begun to be wetted or steeped, and to prevent frauds in mixing corn with corn steeping; the maltster, within a city or market town, shall give 24 hours, elsewhere 48 hours notice in writing to the officer, of the hour or time of the day when he intends to wet corn or grain to be made into malt: And if he shall not begin, and immediately after proceed to cover the whole thereof with water, at the time mentioned in the notice, or within 3 hours after, the notice shall be void; and he shall be obliged to give a fresh notice before he begin. And he shall not begin, but between 4 in the morning, and 9 in the evening. And if he shall not give such notice; or having begun to

wet

wet such corn, shall not immediately proceed to cover the whole with water, and continue the same covered for 40 hours; or begin to wet any but between 4 in the morning and 9 in the evening; or after the officer hath taken account of the corn steeping, shall add any fresh corn or grain; he shall forfeit 100 l. 3 G. 3. c. 13.

19. The maltster shall monthly make entry at the office of excise, of all the malt made (either for sale or not for sale) in such month; on pain of 10 l. 12 An. *§*. 1. c. 2. *f*. 4.

20. And he shall, within four months after entry, pay off the duties, on pain of forfeiting double; and after such default, he shall not sell or carry out any malt until the duty is paid, on pain of double value. 12 An. *§*. 1. c. 2. *f*. 6. 1 G. *§*. 2. c. 2. *f*. 8.

21. After the duty is paid, if any quantity shall be damaged by the sinking of the vessel in which the malt shall be transported from one part of the kingdom to another; the justices shall at the next sessions, on proof of such damage and of the payment of the duty, settle the quantity of the damage, and the allowance to be made in respect thereof, and give a certificate of the sum allowed, which shall bear the same proportion to the whole duty, as the damage shall bear to the value of the malt: on producing of which certificate, the officer shall repay or allow to the proprietor the sum certified. 12 An. *§*. 1. c. 2. *f*. 14.

But where such loss shall happen, the person who shall sustain the same, shall three days before the next sessions, leave notice thereof in writing with the collector of the district where the loss shall happen, and of his intention of applying to the said sessions. *f*. 15.

22. After the duty is paid, if any malt shall be destroyed by fire, by burning of the place where it is kept; or perish by water, by casting away of the vessel in which it is transported; the owner may make proof thereof by two witnesses on oath, and of his having paid the duty, at the next quarter sessions, where such accident shall happen; who shall grant a certificate of such loss, on producing of which, the duty shall be repaid. 12 An. *§*. 1. c. 2. *f*. 27.

23. The commissioners, or such persons as they shall appoint, and in default of such appointment the collector and supervisor for the division, may compound for the duties of malt made to be consumed in private families, at 7 s 6 d a head by the year; and the houses of such persons compounding shall not be liable to the duty, or to the survey of the officers. 12 An. *§*. 1. c. 2. *f*. 11. 33 G. 2. c. 7. *f*. 2.

Exportation.

But if any such person shall sell or deliver out any malt, or shall permit any other person to make malt in his house, or shall sell any malt liquor, or shall have more persons in his family than he compounds for, without giving notice of them to the officer of excise at or before the next quarter day; he shall forfeit 5 l, and lose the benefit of his composition, and for every bushel of malt so fraudulently sold or made, he shall forfeit 20 s. *f.* 12.

24. No malt entred and made for exportation only, shall be liable to the duties; and no drawback shall be allowed for any malt exported. 12 G. c. 4. *f.* 48. 33 G. 2. c. 7. *f.* 14.

But the maker shall be allowed, in consideration of his extraordinary charge and trouble, 3 d for every quarter made for exportation. 12 G. c. 4. *f.* 59.

And by the 1 G. 3. c. 3. There shall be allowed for every 20 quarters of grain made into malt for exportation, thirty quarters of malt, and no more, on exportation, tho' by steeping it shall run out into any greater quantity. *f.* 9.

And the maker, before he shall begin to wet or steep any steeping of corn to be made into malt for exportation, shall leave notice in writing with the officer, of the quantity of corn intended to be contained in each steeping, on pain of 50 l; and the same shall be kept separate from all other corn to be made into malt for home consumption, on pain of 5 s a bushel. 12 G. c. 4. *f.* 49, 58.

And no maker of malt shall begin to wet corn to make into malt for exportation, above six days before all the corn he may have working on his floors for home consumption shall be dried off; nor shall he begin to wet corn for home consumption, above six days before all the corn on his floors for exportation be dried and locked up; on pain of 5 s a bushel. *f.* 50.

And the maker shall keep the whole quantity of his corn making into malt for exportation, of one steeping or wetting, when the same shall be on the kiln, or after it shall be taken off the kiln, separate from any former steeping or wetting, until it hath been measured in presence of the officer; on pain of 50 l. 3 G. 2. c. 7. *f.* 16.

And the officers, during the steeping of the corn so intended for exportation, and till it be dried and locked up, may gage and take an account thereof, in all its operations, as in case the duties were to be charged thereon. 12 G. c. 4. *f.* 52.

And persons opposing the officers in the execution of this act, shall forfeit 50 l. 12 G. c. 4. *f.* 58.

And

And the said maker shall give notice in writing to the officer, or leave notice at the next excise office, of the hour when he intends to take any malt off the kiln, that he may attend the measuring; and after it has been measured, it shall (on pain of 50 l) be immediately carried on ship-board, or else into storehouses, to be provided by such maker, to be there kept apart from all other malt, under two locks, one to be provided by the proprietor, and the other by the officer at the expence of the proprietor, whereof one key to be kept by the proprietor, and the other by the officer, till the same be delivered out for exportation. 12 G. c. 4. f. 51, 58. 3 G. 2. c. 7. f. 17.

And if he, or any person with his privity, shall open such lock, or make other entrance into the place, or carry any of it away, without consent of the officer, or notice given to him; he shall forfeit 100 l. 3 G. 2. c. 7. f. 18.

And when any maker or proprietor shall be desirous to take away any of the malt for exportation, and shall thereof give notice in writing to the officer 40 hours before the time he shall desire to take out the same, expressing in such notice the quantity of the malt, and the port to which it is to be removed; the officer shall attend at the place where the malt is locked up, and see it measured and delivered out. 12 G. c. 4. f. 53.

And the officer shall keep an account of the malt so delivered out, and of the person to whom it belongs, and shall give such person a certificate to the officer of the division to which it is intended to be removed, who shall file the same, and make an entry thereof; and if the proprietor shall neglect to deliver such certificate, he shall forfeit 50 l. 12 G. c. 4. f. 54.

And persons intending to ship malt for exportation, shall give at least 48 hours notice before they begin to put it on board, to the officer of the port in writing, of the hour when such shipping is intended to be begun, and the name of the ship; on pain of 5 s a bushel. 12 G. c. 4. f. 57.

And during the shipping, at all such times as the proprietor shall not be actually shipping merchandizes, the hatches of the ship shall be kept locked with two locks at each hatch, one to be provided and the key kept by the proprietor, and the other by the officer; and the hatches shall be so kept locked, from the time the ships shall be loaded till they be ready to sail. 12 G. c. 4. f. 56.

And persons breaking open the hatches of any ship so locked up, shall forfeit 50 l. 12 G. c. 4. f. 58.

And

Excise. (Malt.)

And the officers may not only attend the measuring of such malt, but continue on board the ship till they be cleared of their ports. 12 G. c. 4. f. 55.

And if it shall be reloaded after shipping for exportation, besides the penalty of the bond which shall be given for its exportation, the same shall be forfeited, and treble the value. 1 G. 3. c. 3. f. 11.

And the maker who shall use any such storehouse for keeping of malt for exportation, shall every nine months after the last clearing, clear out the same on pain of 50l. 3 G. 2. c. 7. f. 20. Or 5 s a bushel. 12 G. c. 4. f. 57. And by the 1 G. 3. c. 3. he shall clear out in 15 months; on pain of 50l. f. 15, 16.

And if any unmalted oats or barley be found mixed among malt shipped for exportation, the person shipping the same shall forfeit 5 s a bushel. 6 G. c. 21. f. 4.

And if ground malt shall be exported, it shall be computed at so many bushels as it contained before it was ground. 12 An. ft. 1. c. 2. f. 30.

Power of the
justices.

25. The penalties relating to this article (except where it is otherwise above directed) shall be sued for, levied, and mitigated as by the laws of excise, or in the courts at *Westminster*; and be employed half to the use of the king, and half to him that shall sue. 12 An. ft. 1. c. 2. f. 9. 24 G. 2. c. 40. f. 33.

Appeal.

26. Persons aggrieved by any judgment of the justices, may appeal to the next quarter sessions, giving six days notice in writing: but if there be not six days between the order of the justices and the sessions, the appeal may be at the second sessions. 12 An. ft. 1. c. 2. f. 37, 38. 1 G. 2. ft. 2. c. 16. f. 3.

And the sessions may award costs to either party, to be levied by warrant of the justices or two of them, on the goods of the party. 12 An. ft. 1. c. 2. f. 38.

Certiorari.

27. And no certiorari shall be allowed, to set aside any order of the justices. 12 An. ft. 1. c. 2. f. 37.

Malt liable to
the duties and
penalties.

28. And all malt in custody of the maker, shall be liable to the duties and penalties, in the same manner as if he were the lawful owner. 12 An. ft. 1. c. 2. f. 10.

X. Paper.

Duty on paper
imported.

1. By the 10 An. c. 19. and 12 An. ft. 2. c. 9. (which are in part altered and explained by the 12 An. ft. 2. c. 19. and 11 G. c. 7.) and by the 13 G. 3. c. 67. certain duties

Excise. (Paper.)

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ties are imposed on paper imported ; which shall be under the management of the commissioners of the customs.

But old rags, old ropes, or junks or old fishing nets may be imported duty free. 11 G. c. 7. s. 10.

2. And by the said acts of 10 An. c. 19. and 12 An. s. 2. c. 9. certain duties are laid on all paper made, and also on all paper painted in Great Britain, as followeth :

	s.	d.
For every ream (at 20 quires of 24 sheets each to the ream) of demy fine	2	3
Demy second	1	6
Crown fine	1	6
Crown second	1	1½
Fool's cap fine	1	6
Fool's cap second	1	1½
Fine pots	1	6
Second pots	0	9
Brown large cap	0	9
Small ordinary brown	0	6

Whited brown 9d a bundle, each bundle containing 40 quires.

Pasteboards, mildboards, and scale boards, 3s a hundred weight.

All other paper not particularly charged, after the rate of 18l for every 100l value.

Painted paper (beside the duty paid for the paper before painting) 1½d a yard square.

But pasteboard made of paper that hath paid the duty, shall not be charged with further duty.

And books printed at Oxford or Cambridge, in Latin, Greek, Oriental, or northern languages, shall have a drawback of the duty on paper.

The said paper paying *ad valorem* shall be computed as it shall be worth to be sold at the next market town, by the oath of the maker or his chief workman, according to his knowledge and belief, to be taken before the collector or supervisor.

3. The commissioners of the treasury shall appoint commissioners of these duties ; and they shall substitute inferior officers. 10 An. c. 19. s. 41.

4. The maker or painter shall give notice in writing at the next office, of his name and place of abode, and where he intends to make the same ; on pain that if he makes any before such notice, he shall forfeit 30l. 10 An. c. 19. s. 43.

Exercise. (*Paper.*)

And no person shall use any place for drying the same, or making it fit for use, other than such common place whereof he hath given notice; on pain of 20 l. *f. 44.*

And all paper, materials, and utensils found in any private workhouse, or other place, for which no entry hath been made or notice given, shall be forfeited. *f. 54.*

Officer to enter
and take ac-
count.

5. The officer shall by day or night, and if in the night in presence of a constable, be permitted on request to enter into the house, mill, yard, drying house, warehouse, or other place, and take an account, and make report thereof to the commissioners or whom they shall appoint, and leave a copy (if demanded) of such report under his hand with the maker; and if he shall not leave such copy (after demand in writing, 12 G. c. 28. *f. 30.*) he shall forfeit 40 s. 10 *An. c. 19. f. 48.*

And he shall be permitted to take an account of the quantity of rags, cordage, and other materials, and of all paper in the possession of any painter or stainer, and of their proceedings in making, or in painting or staining it. 10 *An. c. 19. f. 50.*

Mark on paper
before painting.

6. And before any paper shall be printed, painted, or stained, the officer shall be permitted to take account of the dimensions, and shall stamp or seal every sheet and piece, to denote that such account hath been taken; and if the officer shall miss any quantity whereof he had so taken an account, and shall not on reasonable demand receive satisfaction what is become of it, he may charge the duties for it. 1 G. 2. c. 36. *f. 17.*

Obstructing the
officer.

7. And if any person shall obstruct any officer in the execution of his duty, he shall forfeit 20 l. 10 *An. c. 19. f. 50.*

Removing before
account taken.

8. No maker shall remove any paper of which no account hath been taken, without giving two days notice to the officer; on pain of 20 l. 10 *An. c. 19. f. 51.*

And no person shall remove any such painted paper, until the officer hath taken an account of the quantity thereof, and until every piece or parcel shall be marked or stamped; on pain of 20 l: and the said paper being found in the possession of any stationer or other dealer, or other person for his use, shall also be forfeited. 1 G. 2. c. 36. *f. 18.*

Concealing from
the officer.

9. And the maker or stainer concealing any paper or materials, shall forfeit 20 l. 10 *An. c. 19. f. 53.*

Paper unsurveyed
to be kept sepa-
rate.

10. And the maker and stainer shall keep separate the paper which is unsurveyed, for 48 hours after making or staining,

staining, unless it shall be sooner surveyed by the officer; on pain of 5 l. 10 *An. c. 19. f. 52.*

11. The maker or painter shall once in six weeks make entry on oath at the next office, of all paper made by him fit for use, with the kinds and quantities; on pain of 50 l. 10 *An. c. 19. f. 45.* Entry of paper made.

But no person shall be obliged to go to make entry, further than the next market town. *f. 46.*

12. And the duty shall be cleared off in six weeks after entry, on pain of double duty; and after default in payment, no person shall sell or deliver any out, till the duty is cleared off, on pain of double value of such paper sold or delivered out. 10 *An. c. 19. f. 47.* Payment of the duty.

13. Paper that hath paid the duty may be exported, and the duties shall be drawn back. 10 *An. c. 19. f. 57, 58, 59.* Exportations.

But there shall be no drawback allowed on foreign paper exported. 10 *G. 2. c. 27.*

14. All the excise laws shall be in force for managing these duties; and the penalties shall be sued for, levied, mitigated and disposed of, as by the laws of excise. 10 *An. c. 19. f. 60, 61. 24 G. 2. c. 40. f. 33.* Power of the justices.

15. And all paper, materials, and utensils, in custody of the maker or stainer, or of any to his use, or in trust for him, shall be liable to all duties in arrear, and to all forfeitures relating to the said duties, in the same manner as if the offender or debtor were the lawful owner. 10 *An. c. 19. f. 55.* Paper and utensils liable to distress.

For the stamp duties on paper, see title *Stamps.*

XI. Plate.

Importation.

By the 4 *W. c. 5.* and 6 *G. c. 11.* additional duties are laid on plate imported, over and above what is charged in the book of rates: which shall be under the management of the commissioners of the customs.

True making of plate.

1. To prevent frauds in the true making of plate it is enacted by the 12 & 13 *W. c. 4.* the 1 *An. st. 1. c. 9.* and Assayers.

and 13 G. 3. c. 52. that (besides the city of London) York, Exeter, Bristol, Chester, Norwich, Newcastle upon Tyne, Sheffield, and Birmingham shall be appointed for the assaying and marking of plate.

And the goldsmiths, silversmiths, and plateworkers in the said places, shall be incorporated into a company, and chuse wardens yearly.

And an assayer shall be elected by the company in each of the said places, who shall take an oath of office.

Maker to be entered with the wardens of the company.

2. And by the said acts, every goldsmith, silversmith, and plateworker, within the said places, and elsewhere, shall before he takes upon him to exercise the said trade, enter his name, and mark, and place of abode, with the wardens of the company where an assayer is; and if he shall not make such entry, or shall strike any other mark but what is so entered, he shall forfeit double value, half to the king and half to him that shall sue in any court of record in the county or place where the offence shall be committed.

Assaying.

3. And every goldsmith, silversmith, and plateworker, inhabiting where there is not an assayer, shall first fix his mark, and then send it to an assayer; and if it be found by the assayer to be of the fineness of the standard, then he shall mark it: And if any such person shall make any plate (less in fineness than the standard) or put any to sale (except what by reason of its smallness is not capable of the touch) before it shall be assayed and marked; he shall forfeit the same or the value thereof.

Fineness by the standard.

4. And as to the fineness thereof by the standard, it is enacted by the 6 G. c. 11. that plate may be made, either according to the old standard (of 11 ounces and 2 penny weights fine silver in every pound troy); or according to the new standard (of 11 ounces and 10 penny weights): but differently marked. *f. 41.*

Mark.

5. That is to say, plate of 11 ounces and 2 penny weights, shall be marked with the maker's mark, *viz.* the first letters of his christian and surname; the mark of the goldsmiths company in London, *viz.* the leopard's head, lion passant and a distinct variable mark to denote the year; (or, with the mark of the worker or maker, and with the mark appointed to be used by the assayers at the several respective places:)

And plate of 11 ounces and 10 penny weights shall be marked with the maker's mark, *viz.* the first letters of his christian and surname; and the mark of the said company,

pany, viz. a lion's head erased, the figure of a woman called *Britannia*, and the said mark or letter to denote the year; (or, with the mark of the worker or maker, and the mark of one of the said cities or towns respectively.) 12 G. 2. c. 26. f. 5.

Licence of dealers in plate.

1. No person, who shall trade in, vend, or sell any gold or silver plate, or any goods or wares in which any gold or silver shall be manufactured, shall by himself, or by any other employed by or for him, either publicly or privately, trade in, vend, or sell any piece of plate or goods, or any ware in which the quantity of gold shall be of the weight of two ounces or upwards, or in which the quantity of silver shall be of the weight of 30 ounces or upwards; unless he shall have first paid a duty of 5 l for a licence to be taken out in manner following. 32 G. 2. c. 24. f. 3.

2. That is to say, if it is within the limits of the chief office of excise in *London*, the same shall be granted under the hands and seals of two commissioners of excise; and the duty for the same shall be paid at the chief office of excise in *London*, or at any other place, and to such persons as the said commissioners shall appoint to deliver out such licences, and to receive the said duty: Elsewhere, to be granted under the hands and seals of the several collectors and supervisors of excise, within their respective districts; and the duty for the same shall be paid by the persons taking out such licences, at the office of excise next adjoining to the place where they respectively reside or inhabit, or any other place, and to such persons as the commissioners of excise shall appoint to deliver out such licences and to receive the said duty. 31 G. 2. c. 32. f. 3.

3. And fresh licences shall be taken out yearly, ten days at least before the expiration of 12 kalendar months after taking out the former licence. f. 4.

4. And if any person shall presume or offer to trade in, vend or sell any gold or silver plate, or any goods or wares in which any gold or silver shall be manufactured, or any piece of plate or goods or any ware in which the quantity of gold shall be of the weight of two ounces or upwards, or in which the quantity of silver shall be of the weight of 30 ounces or upwards as aforesaid, without first taking out

How to be taken out.

To be renewed yearly.

Penalty of dealing unlicensed.

out

out such licence, and renewing the same yearly; he shall forfeit 20 l. *f. 4.*

Not to extend to small quantities.

5. Provided that no person shall be liable to take out any licence for trading in, vending, or selling any quantity of gold not exceeding two penny weights, or of silver not exceeding five penny weights, in any one separate and distinct ware or piece of goods. 32 G. 2. c. 24. *f. 1.*

Auctioneer and others selling plate to be deemed traders.

6. All persons using the trade of selling gold or silver plate, or any goods or wares composed of gold or silver, or in which any gold or silver shall be manufactured; and also all persons employed to sell any gold or silver plate, or any such goods or wares aforesaid, at any auction or publick sale; shall respectively be deemed traders in, sellers, or venders of gold or silver plate, and shall take out a licence for the same. 31 G. 2. c. 32. *f. 6.*

Pawnbrokers and refiners.

7. No pawnbroker shall by himself or by any other for his benefit (either publickly or privately) trade in or sell any gold or silver plate, or any goods or wares in which any gold or silver shall be manufactured; and no person by himself or by any other for his benefit shall use the trade of a refiner of gold or silver, without taking out and renewing yearly such licence as aforesaid. 32 G. 2. c. 24. *f. 4.*

And every such pawnbroker and refiner shall be deemed to use the trade of selling or vending gold or silver plate. *id.*

And if any pawnbroker shall trade in or sell any gold or silver plate, or any goods or wares in which any gold or silver shall be manufactured, or shall practise the business of a refiner, without such licence, or shall not have renewed the same yearly, and made such payment as aforesaid; he shall forfeit 20 l. *id.*

Unto what places the licence shall extend.

8. No licence shall authorize any person to whom the same may be granted, and who shall sell such gold or silver plate in shops, to trade in or sell such gold or silver plate in any other shop or place, except in such houses or places thereunto belonging, wherein he shall inhabit and dwell at the time of granting such licence, or in booths or stalls at fairs or markets. 31 G. 2. c. 32. *f. 7.*

Partners.

9. Persons in partnership and carrying on their trade or business in one house, shop, or tenement only; shall not be obliged to take out more than one licence in one year. 31 G. 2. c. 32. *f. 7.*

Prosecution for offences.

10. Prosecutions for offences may be in the courts at Westminster; or otherwise, if within the limits of the chief office

office of excise in *London*, the same may be before three commissioners of excise, and in case of appeal before the commissioners of appeal; and elsewhere, before two justices residing near to the place where the offence was committed.

31 G. 2. c. 32. s. 11.

And the said commissioners of excise, and commissioners for appeals (in case of appeal), and justices respectively, shall upon complaint or information on oath summon the party accused, and upon his appearance or contempt, shall proceed to the examination of the fact; and on due proof made thereof by confession, or oath of one witness, shall give judgment; and issue warrants under their hands for levying the penalties by distress (if not redeemed in 14 days); and for want of sufficient distress, shall imprison the offender till satisfaction be made. *id.*

And they may mitigate the said penalties of 20*l.* as by the laws of excise. 32 G. 2. c. 24. s. 8.

Persons aggrieved may appeal to the next sessions. 31 G. 2. c. 32. s. 11.

11. All forfeitures (the necessary charges for the recovery thereof being first deducted) shall be distributed, half to the king, and half to him who shall inform or sue.

31 G. 2. c. 32. s. 12.

Duty to be paid by the user.

1. By the 29 G. 2. c. 14. There shall be paid, by all persons and bodies politick or corporate, for all silver plate which they shall own, use, have, or keep, these several annual duties, *viz.* For 100 ounces troy weight, and not amounting to 200, 5*s.*; for 200, 10*s.*; and so 5*s.* more for every 100 ounces to the number of 4000, and for 4000 ounces and upwards shall be paid the sum of 10*l.* The same to be under the management of the commissioners of excise. s. 1, 2.

But plate belonging to places of religious worship and only used there shall not be charged. s. 9.

Nor stock in trade of any goldsmith, silversmith, manufacturer, seller or dealer in plate; but they shall pay for plate used in their families. s. 9, 10.

Also persons having plate pledged to, or deposited with them, shall not be charged, unless they also use the same: but the true owner shall be charged. s. 7, 8.

2. And all persons and bodies corporate, who on July 5, 1756, shall own, use, have, or keep any plate chargeable

Entry and payment.

to these duties, within the limits of the chief office of excise in *London*, shall make entry thereof in writing at the said office within 30 days; and elsewhere at the next excise office in 40 days: And all persons who shall after *July 5, 1756*, begin to own, use, have, or keep any such plate, shall make the like entry in 20 days: And at the time of such entry, shall pay the duties; for which the excise officers shall give a receipt. *f. 3, 12.*

And the duties shall continue payable from *July 5*, annually; or from the time of beginning to keep such plate respectively. *f. 3.*

And within 30 days after the commencement of each year, fresh entry shall be made, and the duties paid. *f. 4.*

But persons having made entry and payment, and afterwards acquiring other plate within the year, shall not enter nor pay for the same, till after the expiration of such year. *f. 5.*

Persons neglecting to make entry as aforesaid, or concealing plate to avoid the duties, shall forfeit 20*l.* *f. 4.*

But if they shall enter and pay before prosecution, altho' not strictly within the time, they shall be indemnified. *f. 6.*

And if any person having made entry and payment shall die within the year; he to whom the property shall come shall not be liable to pay for the residue of the year. *f. 11.*

Power of the
justices therein.

3. Prosecutions for the duties and for forfeitures and offences against this act shall be in the courts at *Westminster*: or otherwise, the prosecutions for forfeitures and offences, if it is within the limits of the chief office of excise in *London*, shall be determined by three commissioners, and in case of appeal, by the commissioners of appeal; and elsewhere, by two justices residing near to the place where any forfeiture shall be incurred or offence committed; and the informer or defendant aggrieved may appeal to the next sessions, whose judgment shall be final. *f. 13.*

And on complaint or information on oath exhibited and brought before such commissioners or justices, they shall summon the party accused; and if it is a body politick shall summon the chief officer or officers thereof; and on appearance or contempt, shall proceed to the examination of the matter of fact; and on proof by confession, or oath of one witness, shall give judgment, and issue warrants for levying the forfeitures and penalties on the goods of such person or body politick, and cause sale to be made thereof if not redeemed in 14 days; and for want of sufficient

icient distress, otherwise than in the case of a body politic, shall imprison the offender till satisfaction be made. *f. 13.*

Which said forfeitures and penalties (necessary charges for the recovery thereof being first deducted) shall be half to the king, and half to him who shall inform or sue. *f. 14.*

Exportation.

So much wrought plate shall be exported yearly, as shall be allowed by the commissioners of the customs or three of them. *9 & 10 W. c. 28. f. 1.*

But no drawback shall be allowed on the exportation of silver plate. *31 G. 2. c. 32. f. 9.*

For other regulations concerning plate, not relating to any of these duties, the reader may consult the statutes at large mentioned under this head : And especially the *12 G. 2. c. 26.*

XII. Salt.

1. The duties upon salt shall be under the management of the commissioners of excise. *5 W. c. 7. f. 5.* Officers of the salt duties.

Or particular commissioners may be appointed ; in which case they shall have the same power as commissioners of the excise. *1 An. st. 1. c. 21. f. 26.*

And all collectors and other officers for ascertaining, collecting, or receiving the duty, shall be appointed under the hands and seals of the said commissioners. *5 W. c. 7. f. 5.*

And no person shall act as chief commissioner until he shall before a baron of the exchequer take the oaths of allegiance and supremacy, and the oath following :

You shall swear to execute your office, truly and faithfully without favour or affection, and shall from time to time true account make and deliver to such person and persons as his majesty shall appoint to receive the same ; and shall take no fee or reward for the execution of the said office, from any other person than from his majesty, or those whom his majesty shall appoint in that behalf : So help you God. *5 W. c. 7. f. 14.*

And no person shall be capable of any office relating to the said duties (other than that of chief commissioner), until he shall before two commissioners, or two justices of

British salt
imported.

the peace where he shall be appointed officer, take the said oaths of allegiance and supremacy, and the said last mentioned oath *mutatis mutandis*. 5 W. c. 7. s. 15.

2. By the 2 & 3 An. c. 14. No salt of the produce of Great Britain shall be imported or landed in England; on pain that the same shall be forfeited, and also the ship and tackle; and every person assisting therein shall forfeit 20l, or be imprisoned six months. s. 1. (And by the 5 G. c. 18. s. 23. this is extended to salt shipped for exportation, and put on shore again, or taken out of the vessel.)

And the salt officers may at any time within two months, seize the salt, ship and tackle; and if the owner shall not in 20 days claim the same, and give security to answer the value, they shall be sold. s. 2.

But this shall not extend to salt shipped to be carried coastwise by certificate. s. 3.

Also, where salt entered for exportation, shall be forced into any port by weather, enemies, or other necessity, the owner or master may within 20 days reland the salt, so as entry be made, and the drawback repaid. s. 4.

Also, where a ship shall come in from Ireland, or any other foreign part, having any salt on board, which was taken in only for provision of the ship; the master may land the same, so as entry be made in ten days, and the duty paid or secured as for foreign salt imported. *id.* b.

But if he shall not enter and pay, or secure the duty in ten days, and before it be landed, the same shall be forfeited; and the master, owner, or importer, shall forfeit double value. 5 G. c. 18. s. 18.

Foreign salt
imported.

3. By the 5 W. c. 7. There shall be paid for every gallon of foreign salt imported, 3d over and above other duties. s. 3.

And by the 9 & 10 W. c. 44. an additional duty is laid, of 7d a gallon. s. 3. The same amounting in the whole to 6s 8d a bushel. 8 G. c. 4.

The gallon to be rated after eight gallons to the bushel of Winchester measure. 5 W. c. 7. s. 18.

And 84 lb. weight of foreign salt shall be deemed a bushel. 1 An. st. 1. c. 21. s. 6.

Which said duties shall be paid by the importer, on entry, and before landing; yet, on giving security to the collector, he shall have six months time for payment.

But if he pay ready money, he shall have after the rate of 10l per centum per annum abated. 9 & 10 W. c. 44. s. 6.

And by the 5 An. c. 29. If the salt imported amounts in the whole to more than 40 bushels, a further time is allowed for payment of the duties: in order to which, the salt shall on landing be weighed, cellared, and locked up in the presence of a salt officer, under the custody of the merchant or importer (who is to be at the charge of the cellaring or storehouse); and the merchant or importer may in presence of a salt officer, and by warrant or permit under his hand and seal, have what quantity thereof his occasions may require, not under 40 bushels at a time; giving security for the duty of what quantity he receives, payable in six months; and if he shall pay ready money, he shall have after the rate of 10 l per centum per annum abated. *f. 1, 3.*

But if such foreign salt imported, shall not on landing be secured as aforesaid, it shall be liable to payment of duties, and to such penalties for not paying or securing the same, as if this act had not been made; and no salt so cellared and locked up shall be removed without notice first given to the officer, and without a warrant or permit for conveying it; on pain of forfeiting such salt, and 10 s a bushel, and also 20 l, to be recovered of the importer; and the carrier or person removing it, shall be also liable to the penalty of 10 s a bushel, and 20 l for every offence. *f. 2.*

And no foreign salt shall be imported in any ship or vessel of less burthen than 40 tuns, and in bulk only (except for the necessary provision of the ships); on pain of forfeiting the salt and double value thereof, to be recovered of the importer. *3 G. 2. c. 20. f. 18.*

4. And if any salt be landed before entry made with the salt officer, or before the duty paid, or without a warrant for landing the same signed by the salt officer; it shall be forfeited, or the value, and also 10 s a bushel. *9 & 10 W. c. 44. f. 6.* And moreover every person assisting therein, shall forfeit 100 l. *5 G. c. 18. f. 24.*

5. And any officer of the salt duties, or customs may go on board any vessel, to search if there be any salt on board, and may seize the same if it be found in any other vessel than that wherein it was brought into port, unless it had been entred, or the duty paid; and all such salt shall be forfeited, or the value thereof, to be recovered of the master or owner of the vessel, who shall also be liable to all other penalties as if the same had been landed without entry or payment of duties: and every person obstructing such officer, shall forfeit 40 l. *5 G. c. 18. f. 22.*

Landing salt before payment of the duty.

Search on ship-board.

Ships hovering
near the coast.

6. And where any vessel, laden with salt, shall be found hovering on the coasts, the officers of the customs or salt duties may go on board and compel them to come into port, and may continue on board, till the salt shall be unladen, or the ship depart on her voyage: And if the persons on board such ship, or any other vessel importing salt, shall neglect or refuse to enter, or to unlade such salt, for 20 days after it is come into port, or within that time to depart on their voyage, unless permitted by the chief officer of the customs to stay longer; in such case all the salt on board shall be forfeited, and double value thereof, to be recovered of the master or commander of the vessel.

1 *An. st.* 1. c. 21. f. 7.

Duty on home
salt.

7. By the 5 *W. c.* 7. a duty is laid on home salt of 1d a gallon. f. 3.

Which by the 7 & 8 *W. c.* 31. is explained to extend to all salt made from rock salt, salt refined, or salt made from salt. f. 43.

And by the 9 & 10 *W. c.* 44. a further duty is imposed on all such salt, of 3d a gallon. f. 5. The same amounting in the whole to 3s 4d a bushel.

Note; By the 3 *G. 2. c.* 20. These duties were repealed, but were revived by the 5 *G. 2. c.* 6. for three years, and so from time to time continued, and at last by the 26 *G. 2. c.* 3. made perpetual.

And by the 9 *An. c.* 23. a further duty of 9s a ton, is laid on all rock salt exported to *Ireland.* f. 44.

And rock salt shall be ascertained as to payment of the duties, at 65 pounds weight to the bushel. 1 *An. st.* 1. c. 21. f. 9.

All other salt at 56 pounds to the bushel. 9 & 10 *W. c.* 44. f. 34.

But by the 8 *G. 3. c.* 25. foul salt, called by the several names of grey or scrow salt, salt scale, sand scale, or crustings, being produced in the manufacturing of white salt, and not fit to be applied to the curing of provisions, but which may be beneficial in agriculture, shall be charged only with a duty of 4d a bushel. And if any person, after it has been removed from the works, shall use the same otherwise than for the manuring of land he shall forfeit 60l, one third to the king, and two thirds to the informer, to be levied in like manner, and with like power of mitigation, as by the laws of excise, or in the courts at *Westminster.*

Drawback on
rock salt refined.

8. Where any rock salt for which the duties shall have been paid or secured, shall be melted and refined; the person who

who shall refine it into white salt, shall have an abatement out of the duty of the said white salt, of so much as was charged on the said rock so melted and refined; so as the rock so refined were before the melting thereof weighed in the presence of the officer; and so as oath be first made before a justice near adjoining, of the particular quantity of rock salt by such refiner employed in making the said white salt; and that he or any other person by his privity did not increase the said rock salt by mixing or other undue practice, and that no former allowance for the said rock salt had been made to his use; and so as due proof be made upon oath or otherwise, that the duties for the said rock salt so refined were paid or secured. 10 & 11 W. c. 22. s. 6.

And no rock salt shall be refined or made into white salt in any place except within ten miles of the pit, or at such places as were used for refining rock salt before May 10, 1702, on pain of 40s a bushel. 1 An. st. 1. c. 21. s. 10.

9. Every maker of salt, refiner of rock salt, and proprietor of any salt works or pits, who shall set up or use any salt work, salt pit, salt pan, storehouse, warehouse, or other place, for the making, laying, refining, or keeping of salt, or rock salt, without giving notice thereof at the next salt office; shall forfeit 40 l. 1 An. st. 1. c. 21. s. 1.

Entry of salt works and pits.

10. And if any salt maker, importer of salt, or refiner or proprietor of rock salt, shall on request or demand made, in the day time, or in the night in presence of a constable, refuse to permit the officer to enter and come into his works, warehouse, storehouse, or other place for making, laying, refining, or keeping of salt; he shall forfeit 40 l. 1 An. st. 1. c. 21. s. 2.

Officer to enter and survey.

11. And, generally, if any person shall obstruct any officer in the execution of his office, or of the powers given him by any law relating to the salt duties; he shall forfeit 20 l: and for nonpayment, and in default of distress, he may be committed to the house of correction, to be whipt and kept to hard labour for any time not exceeding one month. 1 An. st. 1. c. 21. s. 4.

Obstructing the officer.

12. No salt shall be delivered from any salt works or pits, without notice first given to the officer; on pain of forfeiture of the salt so delivered, and of 20 l, by the owner of the works or pits. 5 W. c. 7. s. 19.

Removing salt without notice and entry.

And by the 9 & 10 W. c. 44. No salt shall be delivered from any salt works or pits, without notice given to the

officer;

officers; on pain of the owner forfeiting the same; and 10s a bushel. *f. 26*

And if any officer shall deliver, or be consenting or privy to the delivering, removing, or conveying, British white salt, refined salt, rock salt, or salt rocks, from any salt work, crib, storehouse, warehouse, or other place made use of for making, refining, or keeping of any such salt; or from any salt pit; or to the landing any foreign salt out of any vessel importing the same from beyond the seas; before the same be duly entered and charged in the book kept for that purpose; he shall forfeit, over and above the penalty of his bond entered into for the due performance of the trust reposed in him, double the value of such salt, and also 10s a bushel. *5 G. 3. c. 43. f. 40.*

Scales and weights.

13. The collector shall provide at every salt work or pit, a sufficient beam, scales, and weights, or stilyard, and shall have liberty to fix the same, for weighing the salt that shall be delivered from thence; and one or more persons living near, shall be admitted and sworn to the true weighing of such salt, before one justice near adjoining, without fee; and he shall be paid by the collector or officer for the duties. *7 & 8 W. c. 31. f. 46.*

Weighing.

14. Every owner of any rock pit, who shall take any rock salt out of such pit, shall before the removal thereof, cause the same to be weighed in the presence of the salt officer, who shall attend at all reasonable hours in the day time to see it weighed, and take an account and make return thereof in writing under his hand to the commissioners of excise, or whom they shall appoint, leaving a true copy under his hand with the proprietor; and if the proprietor refuse to weigh it in presence of the officer when taken out of the pit, or suffer any rock salt to be removed from the pit before it hath been weighed; he shall forfeit 20*l*; and double value. *10 & 11 W. c. 22. f. 3.*

Entry of salt made.

15. All makers and proprietors of salt shall make entries with the salt officers of the quantity by them made and delivered, or imported; and shall have a warrant under the hand and seal of an officer, empowering them to carry away the same, before it shall be removed, which warrant the officer shall give on paying or securing the duties least nine months, *5 Ann. c. 29. f. 5.* But if any person at the time of entry shall pay ready money, he shall have after the rate of ten per centum per annum allowed. *15 W. c. 7. f. 6.*

Payment of the duties.

16. And the proprietor of rock pits shall clear off the duties of all rock salt, in two days after the charge made by

by the officer, or within the said two days give security to pay the same (in twelve months, 5 *An. c. 29. f. 5.*); on pain of double value of the duties: But if he shall pay within the two days, he shall be allowed after the rate of 10 l. per centum per annum, for the said twelve months. 10 & 11 *W. c. 22. f. 4, 5.*

17. And persons giving security for payment of the duties, may at any time within 28 days after giving the same, pay the duty, and shall have a discount after 10 l. per centum per annum for the remainder of the time. 1 *An. f. 1. c. 21. f. 29.* Discount on payment.

18. But the owners of rock salt, may remove it out of the pits, or warehouses adjoining or belonging to such pits, into their other warehouses or places for storing thereof, for convenience of selling or shipping after entry made, and a warrant taken for the same from the next officer; and shall not be obliged to pay or secure the duty on such removal. 5 *W. c. 7. f. 22.* How far rock salt may be removed, with the duty unpaid.

19. The officers may seize all salt carried before entry, without a permit, and the same shall be brought to the next office; and if it shall not be claimed by the owner or one deputed under his hand, in ten days, it shall be forfeited and sold the next general day of sale: And if it be claimed in ten days, and the claimer doth not make it appear by the oath of one witness that it had been duly entred, and a warrant obtained for removing it, it shall likewise be forfeited: And every person who shall carry or cause it to be carried before such entry and warrant, shall forfeit double the value. 5 *W. c. 7. f. 7.* And also 10 s. a bushel. 9 & 10 *W. c. 44. f. 12.* Salt carried without a permit.

And by the 1 *An. f. 1. c. 21.* If any salt carrier, or other person, shall remove any salt from any salt works, or place thereunto belonging, without entry and payment of the duties or securing the same, or without a permit; the officers may not only seize the salt, but also apprehend the offender, and if he shall not on conviction pay the penalties, and no sufficient distress can be found, he may be committed to the house of correction to be whipt and kept to hard labour for any time not exceeding one month. *f. 4.*

And by the 2 & 3 *An. c. 14.* The carrier who shall carry any salt without a permit, shall forfeit 20 l. *f. 8.*

20. And every person in whose possession any salt shall be found, near the salt works or sea coasts which hath not been entred, and the duty paid or secured; shall if it be foreign salt, be liable to such penalties, as if he had landed the Salt found unentred.

the same without entry or payment of duties; and if it be *English* salt, he shall be liable to such penalties, as if he had removed it from the salt works without entry or payment of duties, and without a permit; unless he shall make it appear, that he bought it of a maker, retailer, or importer of salt, and of whom. 1 *An. st. 1. c. 21. f. 3.*

Several permits
to be delivered
with several
parcels.

21. The salt officer shall deliver *gratis* and without delay, so many several permits to each carrier of salt, as he shall demand for such several horse loads of salt as he shall load at one time, and at one salt work. 7 & 8 *W. c. 31. f. 47.*

Officer may de-
mand sight of the
permit.

22. The officer, where he shall meet with any person carrying salt, by day or night, by land or water, may demand a sight of the permit; and if he shall suspect that there is more salt than is expressed in the permit, he may at his own expence re-weigh the same; and if the salt on re-weighing shall be found to be more in weight than is contained in the permit, the surplussage shall be forfeited; and the person or persons concerned in carrying the same, shall be liable to the penalties and forfeitures as persons carrying salt without payment of the duties. 5 *G. 3. c. 43. f. 42.*

Prices of salt.

23. The lord mayor and aldermen in *London*, and the justices of the peace in the county at their general sessions, may set and publish in writing the prices of salt, and alter the same as there shall be occasion; and persons refusing to sell at such price, or selling at a higher price, shall forfeit 5*l.* half to the king, and half to the informer, by distress, by warrant of the lord mayor or any such justice; and in default of sufficient distress, to be imprisoned till paid. 7 & 8 *W. c. 31. f. 92.*

Salt to be sold by
weight.

24. By the 9 & 10 *W. c. 6.* No person dealing in salt, shall sell it otherwise than by weight, after the rate of 56 pounds to the bushel; on pain of 5*l.* to the informer; to be determined by two justices residing near. And the party grieved may appeal to the next sessions. And the said justices shall on complaint summon the party accused, and on appearance or contempt examine the matter, and on proof by the oath of two witnesses, or confession, give judgment, and shall issue their warrant to levy the same by distress, and cause sale thereof to be made, if not redeemed in six days, rendering the overplus, and for want of sufficient distress, shall imprison the offender till satisfaction is made.

And no person shall buy salt otherwise than by weight, and not by measure; on pain of 10*s.* a bushel, and 10 proportionably. 1 *An. st. 1. c. 21. f. 28.*

25. No retailer or shopkeeper shall ship any salt to be Carrying coast-
sent to any port within the kingdom, before he hath made wile.
it appear by oath or otherwise, before the commissioners
of a salt officer, that the duty is paid or secured, or that it
was bought of some other retailer or shopkeeper that hath
paid the duty. 5 W. c. 7. f. 8.

And all salt to be put on shipboard, shall be weighed at
the place where taken on board; and none shall be carried
on board before it is weighed, and a permit containing
the quantity is obtained; on pain of forfeiture, and 10 s
a bushel: But if the officer shall not attend to weigh it,
or refuse to give a permit, it may be carried on board
without incurring any penalty. 10 & 11 W. c. 22.
f. 10, 11.

And where any salt shall be laid on shipboard, the of-
ficer of the customs where it shall be laden, shall in the
cocquet (which cocquet shall be also signed by the salt of-
ficer) express the quantity: And if such ship shall come
into any port, the officers of the customs or of the salt du-
ties, may go on board and demand a sight of the cocquet,
and if any such officer shall have just cause to suspect, that
there is not so much salt on board as the quantity expressed
in the cocquet, and shall make affidavit thereof, before
the collector or customer of the port, or person executing
either of their offices; he may weigh all the salt on board;
and if there shall not be so much as the cocquet expresseth
(making allowance for waste) the salt remaining shall be
forfeited. 1 An. st. 1. c. 21. f. 13.

And persons shipping salt to be carried coastwise, the
duties for which have been paid or secured, shall have an
allowance for waste after the rate of three bushels for
every 40 bushels of white salt, and after the rate of a
bushel and an half for every 40 bushels of rock salt; which
allowance shall be made but once for the same salt, altho'
it be carried from several ports coastwise. 5 An. c. 29.
f. 4. 6 An. c. 12. f. 1.

And every commander of any vessel that shall carry salt
from one port to another within the kingdom, shall (before
he hath a warrant for landing it) deliver to the salt officers
in the port of landing, a true particular of the quantity,
signed by the salt and customhouse officers of the port from
whence he came; and then the master, mate, or boat-
swain, shall make oath before some of the commissioners
or their officers, that to his knowledge there hath not
been laid on board any salt since he came from such port.
And if the vessel be to deliver one part of the salt at one
port,

port, and another part at another port, then the officers for the salt and customs, where part of the salt shall be delivered, shall certify on the back of the warrant, or by certificate alone, under their hands and seals, how much of the salt hath been there landed, on pain of forfeiting double the value of the salt that shall be otherwise delivered. 5 *W. c. 7. f. 9.* And likewise 10 s a bushel. 9 & 10 *W. c. 44. f. 12.*

And the officer at the unlading port may go on board the ship, and demand a sight of the permit, and weigh the salt upon unlading; and if it be more in weight than is contained in the permit, the surplussage shall be forfeited. And if the master of the ship shall refuse to shew the permit, the officer may seize and detain the salt till it be produced. And if he do not produce it in four days after seizure, the salt shall be forfeited. 10 & 11 *W. c. 22. f. 12, 13.*

On reshipping any salt from any boat, barge or other vessel, and before any dispatches be granted for the salt so reshipped, the master, mate, or chief boatman, shall make oath before the salt officer, that all the salt taken in at the place of lading is reshipped on board such vessel, and that no salt hath been added to it or taken from it, to the best of his knowledge and belief; on pain of forfeiting double the value of the salt that shall be otherwise reshipped, and likewise 10 s a bushel. 5 *G. c. 18. f. 25.*

And where any subject hath shipped salt that hath paid duty, in order to be conveyed to some part of *England*, and any of it is lost at sea (or in any port, harbour, or river, 8 *Geo. c. 4. f. 11.*) by storm, or being thrown overboard for preserving mens lives or the vessel (or by sinking of the ship, or be taken by enemies, 9 & 10 *W. c. 44. 2 & 3 An. c. 14.*); in such case, the merchant or owner of the salt shall, on proof made by the oath of two witnesses, whereof the master or mate shall be one, at the quarter sessions where he shall inhabit, of the loss of such salt, and that the same was not occasioned by any leakage of the ship, or any negligence or default of the master or mariners, receive from the said sessions a certificate that such proof was made before them; and on producing the certificate to the salt officer he shall let him buy the like quantity duty free, 2 & 3 *An. c. 14. f. 18.* Which certificate shall also vacate the security given for payment of the duties. 26 *G. 2. c. 32. f. 6.*

Exportation.

26. When any salt shall be entred to be put on board, and the duty paid or secured; the officer shall, on due notice, by himself, or deputy, between sun rising and setting, attend

attend the weighing it out, without loss of time; on pain of 40 s. 9 & 10 W. c. 6. f. 3.

And the salt officers may go aboard all ships exporting salt, and continue, and take an account thereof; and if any person shall obstruct any such officer, he shall forfeit 20 l. 1 An. ft. 1. c. 21. f. 15.

And there shall be a drawback of the duties on salt exported. 5 W. c. 7. f. 11. 10 & 11 W. c. 22. f. 7. 5 An. c. 29. f. 16.

Moreover there shall be an allowance of four bushels for every 40 bushels of white salt, and of two for every 40 bushels of rock salt, exported to Ireland; for the waste in carriage. 5 An. c. 29. f. 14.

And if any salt, for which the duty hath been repaid on exportation, shall be landed again before the duty be again paid and entry made, and other things performed, as in case of foreign salt imported; the offender shall forfeit double value, and 10 s a bushel, and the other penalties for foreign salt landed unentred. 9 & 10 W. c. 44. f. 27. 5 W. c. 7. f. 20.

And if any ship laden with salt exported, shall by stress of weather or otherwise be drove into any port, the salt officer may come on board, and continue till the ship shall unlade her cargo, or return to sea; on pain of 20 l, to be recovered of the master who shall refuse the officer to come or continue on board. And if any part of the salt shall be put on shore, without entry or repayment of the duty; the said salt, and also the whole cargo of salt in the ship, shall be forfeited. 1 An. ft. 1. c. 21. f. 12.

And where any salt, for which the duties shall have been paid or secured, shall be shipped in order to be exported, and the same shall perish by sinking of the ship in the port, before the exporter shall be intitled to a drawback; the exporter or proprietor shall on proof made at the next sessions, to be held next to the place where it shall so perish, of the loss of such salt, receive from the said sessions a certificate, that such proof was made before them; and on producing the certificate to the collector of the salt duties, he shall let such person buy the like quantity duty free. 2 & 3 An. c. 14. f. 10.

And where any salt shall be shipped in order for exportation to Ireland, and it shall perish by sinking of the ship, or be taken by enemies; the exporter or proprietor shall, on proof made at the quarter sessions for the place from whence it was exported, of the loss of such salt, receive from the said sessions a certificate, that such proof was made

made before them; and on producing the certificate to the officer of the place where the duty hath been paid or secured, the security shall be discharged, and the money repaid. 4 *Ann. c. 12. f. 11.* 9 *Ann. c. 23. f. 46.* Proof to be made in two years. 26 *G. 2. c. 32. f. 7.*

Salt for curing
of fish.

27. The curers of fish for exportation may import foreign salt or take from the pit or work *British* salt (or rock salt refined, 8 *G. c. 16. f. 6.*) for curing fish for exportation, without duty, except the customs on importation; such foreign salt being landed, and such *British* salt being taken from the pits or works, and weighed, in the presence of an officer, and being lodged in a warehouse, under a lock both of the officer and proprietor; which shall remain there during the several intervals of the fishing season. 5 *G. c. 18. f. 1.*

And any person who shall imbezil any foreign salt after importation, and before cellaring, shall forfeit 20 s a bushel; and any person who shall imbezil any *British* salt, after weighing at the pits or works, and before cellaring, shall forfeit 10 s a bushel. 5 *G. c. 18. f. 4.*

The proprietor shall enter at the next office the quantity so by him lodged; and the officer shall keep an account of the quantity in his custody. 5 *G. c. 18. f. 1.*

And at the beginning of the fishing season, the proprietor or his agent shall make oath in writing before an officer at the next office, declaring the quantity so lodged, and that it is all intended for curing of fish for exportation only, and shall not by his consent be delivered but for the said purpose; after which oath so made and filed, the officer in whose custody the salt hath continued during the interval of the fishing season, shall deliver all the said salt into the sole custody of the proprietor. 5 *G. c. 18. f. 1.*

And in the case of herrings to be cured for exportation it is enacted by the 8 *G. c. 4.* and 8 *G. c. 16.* that the proprietor of such salt delivered duty free, or his agent, shall instead of the said oath, make oath in writing at the next salt office, declaring the quantity of the foreign or *British* salt respectively lodged for curing of fish, and that it is intended for the curing of fish for exportation only, and shall not by his consent be delivered but for that purpose, except so much thereof as shall be used for curing such red or white herrings as shall be entred for home consumption, and charged with the duties by the said acts respectively chargeable thereupon.

And

And no foreign salt shall be delivered over from the joint custody of the officer and proprietor, into the sole custody of the proprietor or his agent, for curing fish for exportation; except he give security to the satisfaction of the chief officer of the salt duty in the port, that he will account for the foreign salt so by him received, or answer the penalties. 8 G. 2. c. 12. s. 3.

And for every bushel of salt so lodged, which shall be either carried away, or found wanting at the redelivering thereof into the sole custody of the proprietor, reasonable allowance for waste being first made; the proprietor shall forfeit 20 s. 5 G. c. 18. s. 3.

And at the end of every fishing season, the officer shall take an account of the quantity remaining in hand, which shall be locked up as aforesaid; and the proprietor shall (within three months after the expiration of each year, 8 G. c. 4. s. 10.) deliver an account in writing into the office, containing the quantity of fish exported or entred for exportation, on which the salt hath been used; together with a certificate from the officer where it is shipped for exportation, verifying the account; which account shall be also affirmed by the oath of the proprietor or his agent, and remain in the office; and if any of the salt shall be delivered over to any other person, and used by him in curing of fish, that also shall be expressed in the account, and such person shall in like manner make another account of all the salt used by him: And if any such person shall neglect or refuse to deliver such account within the said time; he shall forfeit 40 l. 5 G. c. 18. s. 1.

And if the proprietor of such salt so delivered over, shall not make it appear by oath or otherwise to the proper officer, that such salt so delivered over was used for curing of fish; he shall be deemed guilty of imbeziling it, and forfeit 50 l. 11 G. c. 30. s. 41.

Also the said account shall express the quantity of red or white herrings entred for home consumption, on which such salt hath been used. 8 G. c. 4. s. 3. 8 G. c. 16. s. 3.

And for every bushel of salt, so taken out of the cellar or salt works, which shall not be so accounted for by such oath and certificate; or by certificate from the quarter sessions, that proof was there made, that such salt was put on board for curing fish at sea, and was there taken by enemies, or otherwise lost at sea; or shall not be returned into, or found remaining in the cellar or warehouse; the owner

Excise. (Salt.)

owner or other person standing accountable for the same, shall forfeit 20 s. And the proprietor or his agent selling, giving away, using or delivering any such salt otherwise than for the purposes aforesaid; shall forfeit 20 s. a bushel: And every person buying or receiving the same, shall forfeit also 20 s. a bushel: And in default of payment in 14 days after conviction, and where no sufficient effects can be found to answer the same, he shall be sent to the house of correction, to be whipped and kept to hard labour, not exceeding three months. 5 G. c. 18. s. 2.

For every cask of pilchards or scads exported, containing 50 gallons, shall be paid by the salt officer an allowance of 7 s; for every hundred of cod fish, ling or hake (except dried ones called haberdines) of 14 inches long, from the bone in the fin to the third joint in the tail, 5 s; for every barrel of wet cod fish, ling, or hake, of 32 gallons, 2 s; for every hundred weight of haberdines 3 s; for every barrel of salmon of 42 gallons 4 s 6 d; for every barrel of white herrings of 32 gallons 2 s 8 d; for every barrel of full red herrings of 32 gallons 1 s 9 d; for every barrel of clean shotten herrings of 32 gallons 1 s; for every last of dried red sprats 1 s. And the officers shall cut off part of the tail of the codfish, ling and hake; and mark the casks of the other fish, that it may be known that they have once had the allowance. 5 G. c. 18. s. 6.

And the maker or curer of red herrings, before he remove them (except for exportation) from the place of curing, shall make entry thereof at the next salt office, and pay 1 s 8 d a thousand. And if they be packed up in casks, the number shall be marked on the head; and a permit shall be given by the salt officer, expressing the number, and the mark and number of the casks, and for what place they are intended, and whether to be sent by land or water; on pain of forfeiting all the red herrings removed otherwise, and also 40 s a thousand. 8 G. c. 4. s. 2. And as the duties on salt shall rise or fall, the 1 s 8 d a thousand shall rise and fall proportionably. s. 5.

And the maker or curer of white herrings, before he remove them (except for exportation) from the place of curing, shall make entry thereof at the next salt office, and pay 3 s 4 d a barrel; and the cask shall be marked on the head, shewing the contents: then a permit shall be given by the salt officer, expressing the quantity, and mark and number of the casks, and for what place they are intended, and whether to be sent by land or water;

on pain of forfeiting all the white herrings removed otherwise, with the casks, and also 40 s a cask. 8 G. c. 16.

And the officers at all times in the day, or in the night in presence of a constable, may enter into the cellars and warehouses, and inspect the curing of the fish, and gage the salt, and mark the casks, and see them exported; and if any person shall obstruct them, he shall forfeit 20 l. 5 G. c. 18. f. 7.

No herrings, pilchards, scads, codfish, ling, hake, salmon, or dried red sprats, shall after they be put on board any boat or vessel, in order to be exported, be taken out thereof, otherwise than to put the fish into the ships in which they are to be exported, nor put on shore but in the presence of a salt officer; on pain that the same shall be forfeited, and also the ship and tackle; and every person assisting therein, shall forfeit 20 l, or be imprisoned six months. 5 G. c. 18. f. 23. 2 & 3 An. c. 14.

If the said fish shall not be exported, for want of an opportunity, while they are good and merchantable; the owner may cause them to be destroyed in the presence of an officer; and the officer's certificate that they were destroyed, shall be admitted to verify the account. 8 G. c. 4. f. 4.

No person shall cure or pack pilchards, for sale, unless he be owner or part owner of a seyn or drift net, or have the consent of such owner in writing, and that on each cask or hoghead the word *seyn* or *drift* shall be burnt with an iron, together with the name and surname of the owner, and the number of pilchards; on pain of double value. 1 An. f. 1. c. 21. f. 31.

28. For every barrel of salted beef or pork exported for sale, there shall be allowed 5 s a barrel, to be paid by the salt officer in 30 days after demand, on a debenture to be prepared by the collector of the customs, and verified by the searcher as to the quantity, and that it is good and merchantable: and the oath of the exporter or agent shall be first taken before the principal officers of the port, that it was salted with salt for which the duties have been paid and not drawn back, and that it is really exported for sale, and that no part thereof was spent nor intended to be spent for the ship's use, and not intended to be relanded; and the salt officers, on exportation of beef or pork, may mark the barrel or vessel, that it may be known to have been exported. 5 An. c. 29. f. 8.

Salt for curing of beef and pork.

Excise. (Salt.)

And if any such beef or pork shall be relanded, it shall be forfeited, and also 40 s a barrel; to be recovered of the importer or proprietor. *f. 9.*

Using brine or
rock salt for
curing of flesh or
fish.

29. No person shall use any brine before it is boiled into salt, or any rock salt before it is refined into white salt for pickling or curing of flesh or fish, or preserving any provisions; on pain of 40 s for every gallon of brine, or pound of rock salt. *1 An. st. 1. c. 21. f. 5.*

And every person who shall carry any brine from the salt pits (other than the known proprietors of pans for boiling it into white salt) shall likewise forfeit 40 s a gallon. *5 G. c. 18. f. 17.*

Salt relanded
from boats or
other vessels.

30. Where salt shall be shipped on board any boat, barge, or other vessel, in order to be carried down any river, or to be carried coastwise, for the purposes of the fishery, or to be reshipped for exportation, or otherwise, and the same or any part thereof shall be landed without the presence of an officer; all such salt so landed shall be forfeited, and also 10 s a bushel; to be recovered of the owner of the vessel; and also the vessel shall be forfeited, together with the furniture; and every person that shall take any salt out of such vessel, or carry the same on shore, or convey the same from the shore when landed, or shall be assisting therein, shall forfeit 20 l. *5 G. 3. c. 43. f. 41.*

Power of the
justices.

31. All penalties and forfeitures given by any act relating to the duties upon salt (except where it is herein otherwise directed) shall be employed, half to the use of the king, and half to him who shall seize or inform, to be recovered in such manner, and with such power of mitigation, as any forfeiture may be by any law of excise; or in the courts at *Westminster*. And every such officer may seize all salt and other things, which by any law relating to the duties on salt are declared to be forfeited. *5 G. c. 18. f. 26. 24 G. 2. c. 40. f. 33.*

And by the *5 G. 3. c. 43.* In all cases, where salt or fish of any kind shall be liable to seizure, by virtue of this or any former act; the bags, sacks, casks, or other package, and also the carriages, horses, and other cattle, made use of in carrying the same, shall be forfeited, and may be seized accordingly. *f. 45.*

Appeal.

32. And if any person is aggrieved by any order of two justices relating to the duties upon salt, or to any forfeiture or offence concerning the same; he may appeal to the next quarter sessions. *10 & 11 W. c. 22. f. 9.*

33. But

Excise. (Salt.)

115.

33. But no dealer in salt shall act as a justice of the peace in any matter relating to the duties upon salt; and if there shall not be a sufficient number of justices in any corporation, nor dealers in salt, the justices of the county shall have power to act therein. 1 *An. ft.* 1. c. 21. f. 18.

Dealer in salt not to act as a justice.

34. If any salt, as well British as foreign rock salt, or salt refined from rock salt, or red or white herrings, or any other sort of fish, be seized for non-payment of duties, or any other cause of forfeiture, by any of the laws relating to the duties on salt or fish now in force; and any dispute shall arise, whether the same had been duly entered, and the duties paid or secured; or that such salt or fish had been legally condemned; or that the salt had been duly entred and locked up for the fishery; or that the quantity of salt used in the curing of fish, as set forth in the curer's account, was used: the proof shall lie on the owner or claimer of such salt or herrings, or the curer of fish, and not on the officer. 5 *G.* 3. c. 43. f. 44.

Proof to lie on the claimer, and not on the officer.

XIII. Soap.

1. By the 10 *An. c.* 19. There shall be paid for all soap imported (over and above former duties) 2 d a pound; and by the 12 *An. ft.* 2. c. 9. the further sum of 1 d a pound: Which shall be under the management of the commissioners of the customs.

Duty on soap imported.

2. And by the said act of 10 *An. c.* 19. there shall be paid for all soap made in this kingdom 1 d a pound; and by the 12 *An. ft.* 2. c. 9. the further sum of one half penny a pound.

Duty on soap made in the kingdom.

3. And the commissioners of the treasury shall appoint commissioners for the duty on soap made in the kingdom; who shall substitute inferior officers. 10 *An. c.* 19. f. 5.

Officers for the duties on soap.

4. And no maker of soap shall set up, alter, or use any boiling house, workhouse, warehouse, storehouse, shop, room, or other place for the making or keeping of soap, or for the boiling or keeping any oil, tallow, pot-ash, lime, or other materials proper to be made into soap; or use any copper, kettle, furnace, fat, cistern, trough, or other vessel for the boiling or making of soap, without first giving notice thereof in writing, at the next office for the said duties; on pain of 50 l. 10 *An. c.* 19. f. 6.

Place of making to be entred.

And all soap, oil, tallow, and other materials, which shall be found in any private boiling house, workhouse, warehouse, or other place, and all private coppers, kettles, furnaces, troughs, and other vessels, for which no entry shall be made, or notice given, shall be forfeited, and the value thereof. 10 *An. c. 19. f. 19.*

And by the 5 *G. 3. c. 43.* Whereas offenders frequently withdraw themselves to avoid the aforesaid penalty; it is enacted, that a summons left at the place where discovery shall be made of such offence, directed to the person prosecuted by his right or assumed name, shall be as effectual as if delivered personally, and directed to him by his proper name. *f. 19.*

Covers and locks
to be provided.

5. And every person who shall make any *hard* soap, shall at his own expence provide sufficient wooden covers (to be approved of in writing by the surveyor or supervisor) to every copper, pan, or other utensil, wherein he shall boil or make any hard soap; which vessels, with the covers thereto affixed, and also the pipes that convey the waste or salt lees from the said coppers, pans, or other utensils, shall be locked and sealed down by the officer, as soon as the fire is damped or withdrawn, whenever any soap or any thing of a soapy quality shall be left therein. Which said locks, and keys to the same, and all other necessary fastenings for securing the said vessels and pipes, shall be provided by the surveyor or supervisor, at the expence of the maker. And if any person shall make any hard soap before he shall have affixed such covers, or shall refuse to pay for the locks and keys and other fastenings as aforesaid, or shall wilfully break or damage any such lock, or seal, or other fastening; he shall forfeit 100*l.* 5 *G. 3. c. 43. f. 15.* 12 *G. 3. c. 46. f. 7.*

Officer to enter
and survey.

6. The officer shall at all times, by day or night, and if in the night then in the presence of a constable, be permitted on request to enter the house, boiling house, warehouse, or other place, used by any maker of soap; and by gaging, weighing or otherwise, take an account of the quantity, and thereof make return in writing to the commissioners or whom they shall appoint, leaving a true copy, if demanded, under his hand with the maker; and if he shall refuse or neglect to leave such copy (after demand in writing, 12 *G. c. 23. f. 30.*) he shall forfeit 40*s.* 10 *An. c. 19. f. 12.*

And if any maker shall obstruct the officer, he shall forfeit 20*l.* *f. 15.*

7. Every

7. Every maker of soap, before he begin any making, if within the bills of mortality, shall give 12 hours, Notice of the time of working. if elsewhere, 24 hours notice in writing to the officer, of the time and hour when he intends to begin; on pain of 50 l. 11 G. c. 30. f. 33.

And putting lees or lye into the copper or other utensil, shall he deemed a beginning such making, so as to subject him to the forfeiture. f. 34.

And if the maker shall not begin in six hours after the time mentioned in the notice within the bills, and in 12 hours elsewhere; the notice shall be void. f. 35.

And if the copper or other utensil be locked or sealed down, the officer shall attend to unlock and open the same, after the maker hath given to him 12 hours notice if within the limits of the head office in London, and elsewhere 24 hours notice, of such his intention. And if by any contrivance such maker shall open any copper, pan, utensil, or pipe, before the same shall have been opened by the officer; he shall forfeit 20 l. 5 G. 3. c. 43. f. 15.

And no maker of hard soap shall, upon any pretence of cleaning or washing any copper, pan, or other utensil, used in boiling of soap, or on any other pretence, presume to light any fire under the same, without first giving such notice; on pain of 20 l. f. 16.

8. Every maker of hard soap shall make use of regular square or oblong frames only, for the cleansing or putting his soap (whether perfect or not perfect) into, when taken out of the vessel where it was boiled or prepared; and the bottom, sides, and ends of every such frame shall be 2 inches thick at the least; and such frame shall not exceed 45 inches in length, nor 15 inches in breadth; of which frames he shall give notice in writing at the next office, before he shall use the same; all which said frames shall be marked and numbered by the surveyor or supervisor, at the expence of such maker: on pain of forfeiting, for every such offence respectively, the sum of 20 l. 5 G. 3. c. 43. f. 17. Frames to be made use of in working.

9. If any stale or rotten soap, or cuttings, be put into the copper or pan, in presence of an officer, to be refreshed or new made; the officer shall make allowance of the duty, and certify the same upon his report. 10 An. c. 19. f. 28. Reworking stale soap.

But if it shall be put into any making of soap, without giving to the officer 12 hours notice in writing within the bills, and 25 hours elsewhere; there shall be no allowance made for it. 11 G. c. 30. f. 37.

Excise. (Soap.)

And if any officer shall falsely pretend that he had such notice when he had not, and make and certify such allowance; he, and also the maker, shall forfeit 10s for every pound so certified. *f. 38.*

But no *hard* soap (whether perfectly made or not), after the same shall have been cleansed or put into the frame, shall on any pretence be returned or put again into the copper or other utensil, for boiling or reworking; and if it shall be so returned, it shall be charged again with the duties. *5 G. 3. c. 43. f. 18.*

And the officer shall allow to the maker in his charge, one pound in every ten of such hard soap; which shall be a full compensation for all waste, losses or damages. *f. 14.*

Scales and weights.

10. And the maker shall keep just scales and weights where he makes his soap, and permit and assist the officer to use them; on pain of 10l. *10 An. c. 19. f. 13.*

And by the *10 G. 3. c. 44.* if he shall use insufficient scales or weights, he shall forfeit 100l: but not to be prosecuted both on this and the former act.

Officer to charge for materials missing.

11. And the officer shall be permitted to take an account of the quantities of oil, tallow, pot-ashes, lime, and other materials proper to be made into soap, that shall be in the maker's possession; and if the officer shall miss any quantity of them, which he had taken account of the last time he was there, and shall not on reasonable demand receive satisfaction what is become of them, the officer may charge him with such quantity of soap, as such materials in his judgment would have made, not exceeding 14 gallons of such ingredients (besides the lees) for every barrel. *10 An. c. 19. f. 14.*

Removing soap unsurveyed.

12. And no maker shall (on pain of 20l.) remove any soap of which no account hath been taken by the officer, from where it was made, without giving the officer within the bills 24 hours notice, and in other parts two days notice, of his intention to remove the same. *10 An. c. 19. f. 16.*

Unsurveyed to be kept separate.

13. And the makers shall keep all the soap by them made, and not surveyed, separate from that which hath been surveyed, for 24 hours after making, within the bills, or two days in any other place; unless it shall have been sooner surveyed; on pain of 5l. *10 An. c. 19. f. 17.*

Concealing.

14. And if any maker shall conceal any soap or materials; he shall forfeit the same, and also 500l. *1 G. 2. c. 36. f. 14, 15.*

And

And by the 5 G. 3. c. 43. If the officer shall have cause to suspect, that soap is privately making in any place; or that any soap is concealed with intent to avoid the duty; in such case, on oath made by such officer before a commissioner or one justice residing near to the place, setting forth the ground of his suspicion, such commissioner or justice may, if he shall judge it reasonable, by special warrant authorize such officer, by day or night (but if in the night, in presence of a constable) to enter into every such place suspected, and to seize and carry away as forfeited all such soap as he shall there find so privately making, together with all materials then ready or preparing for making of soap, and likewise all such soap as they shall find so concealed, together with the boxes or other package: And the person that shall be found privately making soap, or in whose possession such soap shall be found, shall forfeit 100 l. *f. 20.*

15. The maker within the bills shall monthly, and elsewhere every six weeks, make entry in writing at the next office, of all the soap by him made within the said month or six weeks, setting forth the weight, and what quantity was made at each boiling in the several weeks; on pain of 50 l. Which entries shall be on the oath of the maker, or chief workman, according to the best of his knowledge and belief. The said entry and oath within the bills, to be at the general office, and elsewhere with the collector and supervisor. *10 An. c. 19. f. 9.* Entry of soap made.

But no maker shall be obliged to send further to make entry, than to the next market town. *f. 10.*

16. And the measure of soap shall be this; every barrel shall contain 256 lb. averdupois: half barrel 128; firkin 64; half firkin 32; besides the weight or tare of the cask. And all soap (except hard cake soap, and ball soap, *10 An. c. 26. f. 111.*) shall upon making thereof be put by the maker into such cask, and none other. *10 An. c. 19. f. 8.* Measure of soap.

And all soft soap that shall be filled in any other cask less than barrels, half barrels, firkins, and half firkins, shall be forfeited, and also 5 l. *12 An. f. 2. c. 9. f. 19.*

17. The maker within the bills, shall within four weeks, and elsewhere within six weeks after entry, clear off the duties; on pain of double duty; and no maker, after such default in payment, shall sell or deliver out any soap, till he hath paid off his duty; on pain of double value. *10 An. c. 19. f. 11.* Payment of the duties.

Drawback for
soap used in the
woollen manu-
facture.

18. By the 10 *An. c.* 19. Any person who shall use soap in making of cloths, or other manufactures of sheeps or lambs wool only, or manufactures whereof the greatest part of the value of the materials shall be wool; or in finishing the said manufactures; or preparing the wool for the same; or in whitening new linen in the piece, (or his chief workman)——may make proof in writing by affidavit, before the collector or supervisor, specifying the kinds and quantity of the manufactures, and the days between which, and the places where the same were made, prepared, or whitened, and the quantity and kind of soap consumed therein, and that no allowance for the duty on such soap hath been made: whereupon the collector shall repay one third of the duty on such soap. *f.* 29.

And the said affidavit need not be stamped; and no fee shall be taken, except 4 d for writing the affidavit, on pain of treble damages to the party grieved, with full costs; to be recovered as the other penalties. *f.* 30.

And any person making false affidavit, shall forfeit treble value of the allowance; and for the second offence (on conviction in the courts at *Westminster*) shall suffer as for wilful perjury. *f.* 31. And by the 12 *An. st.* 2. *c.* 9. the whole duty on that act shall be repaid.

But this shall not extend to allow any greater drawback for soap imported, than for soap made in this kingdom; but only so much shall be repaid as the drawback of the duties on soap made in this kingdom shall amount unto. 14 *G. 3. c.* 73. *f.* 15.

Soap carried
coastw.se.

19. Cocquets granted for shipping soap, to be landed in any other part of the kingdom, shall express the quality, quantity, and weight, the mark of the package, and by whom made and sold, and where consigned; and if shipped without such cocquet, the same shall be forfeited, and seized, together with the package. 23 *G. 2. c.* 21. *f.* 29.

Importation and
exportation.

20. No soap shall be imported, otherwise than in some package, containing at least 224 pounds of neat soap, and stowed openly in the hold; on pain of being seized and forfeited, together with the package, and the master of the vessel to forfeit 50 l. 23 *G. 2. c.* 21. *f.* 27.

But on information brought against any such master, he may detain the wages of the mariners, till it be determined; and if it shall appear, that the soap was put on board by any mariner without the master's knowledge, the master may apply the wages of such mariner, in payment of the forfeiture. 26 *G. 2. c.* 32. *f.* 8.

And

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And the officers of excise (in like manner as the officers of the customs) may go on board any vessel, and search for and seize all soap forfeited, together with the package; and they may likewise seize such as before entry and payment of duties, shall be found unshipping or unshipped. 23 G. 2. c. 21. f. 28.

Soap that hath paid the duty may be exported; and the duties shall be drawn back. 10 An. c. 19. f. 22, 23, 24. But no drawback shall be allowed on the exportation of any foreign soap imported. 23 G. 2. c. 21. f. 36.

The officers of excise or customs may seize any soap with the package, that shall be found in any vessel, cart, or other carriage; where they shall have good reason to believe that the same was made in some private workhouse, or clandestinely imported without payment of duty, or that the same has been exported and relanded after repayment of the duty; and if the party in whose possession the same shall be found, shall not at the hearing of the information, make it appear that the duty hath been paid or secured, he shall forfeit 5 l for every 100 pounds weight; and also the goods and package shall be forfeited. 23 G. 2. c. 21. f. 31.

And if any person shall knowingly harbour or conceal any soap unlawfully imported, or relanded after shipping for exportation upon debenture; he shall, whether he claims any property therein or not, forfeit 50 l for every hundred weight, together with the goods and package. 23 G. 2. c. 21. f. 32.

And where any such soap shall be seized as forfeited, and no person shall claim the same in 20 days, if it is within the limits of the chief office of excise in London, the officer who made the seizure may cause notice signed by the solicitor of excise, to be affixed at the *Royal Exchange*, of the time of proceeding to trial and condemnation of the same by the commissioners of excise; and if it is out of the said limits, then publick notice shall be given by proclamation at the next market town, on the market day next after the said 20 days, of the day and place where the justices will proceed to trial and condemnation thereof. And the judgment thereon shall not be liable to any appeal, or be removed by certiorari. 23 G. 2. c. 21. f. 33.

21. The excise laws shall be in force for managing these duties; and the penalties (except where it is otherwise herein directed) shall be recovered and mitigated as by the laws of excise, or in the courts at *Westminster*; and

Power of the justices.

- and distributed, half to the king, and half to him that shall sue. 10 *An. c.* 19. *f.* 26. 11 *G. c.* 30. *f.* 39. 24 *G. 2. c.* 40. *f.* 33.
- Proof to lie on the claimer.** 22. And where any soap shall be seized for non-payment of duties, or non-entry, and it shall be disputed whether such payment or entry were made or not, the proof shall lie on the claimer, and not on the officer. 23 *G. 2. c.* 21. *f.* 35.
- Appeal.** 23. And if the party is not satisfied with any judgment of the justices on the act of 23 *G. 2. c.* 21. abovementioned, he may appeal to the next quarter sessions (except in the case before mentioned, where no person shall claim the goods seized.) *f.* 37.
- Mitigation.** 24. And on information on the said act of the 23 *G. 2.* the mitigation shall not reduce the penalty to less than a fourth part, over and above the costs to be allowed. *f.* 38.
- Utenils liable.** 25. And all soap, materials, and utensils in the custody of the maker, or of any in trust for him, shall be liable to the duties and penalties, as if the debtor or offender were the lawful owner. 10 *An. c.* 19. *f.* 20.

XIV. Spirituous liquors.

So far as running of brandy and other spirituous liquors falleth in with the running of other uncustomed goods; see the first part of this title concerning the Customs in general.

Duty on importation.

1. By the several acts a general duty of excise is laid on every gallon of spirituous liquors imported (over and above the customs) as follows; viz.

Single brandy, spirits or aqua vitæ, 4 s 8 d. Double brandy, spirits, or aqua vitæ, 8 s 8 d.

Which shall be raised as the duties on other exciseable liquors. 12 *C. 2. c.* 23. 12 *C. 2. c.* 24. 4 & 5 *W. c.* 3. 4 *An. c.* 6. 6 *G. 2. c.* 17.

Arrack from the *British* colonies in the *East Indies*, the same as for brandy and foreign spirits imported.

And by the 32 *G. 2. c.* 10. there shall be paid an additional duty of 12 d in the pound, according to the value in the book of rates, on all foreign brandy and spirits imported (except rum, of the produce of the *British* sugar plantations.) *f.* 1.

And by the 33 *G. 2. c.* 9. over and above all other duties, there shall be paid an additional excise duty of

s for every gallon of single brandy, spirits, or aqua vitæ, imported; and of 2 s for every gallon of brandy, spirits, or aqua vitæ above proof, commonly called double brandy, imported. *f. 8, 9.*

And by the 6 G. 3. c. 47. for every gallon of single brandy, spirits, or aqua vitæ imported, not being the produce of the *British* colonies or plantations, a further excise duty of 6 d; above proof, 1 s.

2. To enable the gagers the better to ascertain the proof of all foreign imported liquors liable to the duties of excise; it shall be lawful for the gagers or other officers of excise, at any time before the gaging, to take a sample not exceeding half a pint, out of each cask or other package containing foreign spiruous liquors imported, without paying any thing for the same. *32 G. 2. c. 29.*

3. And if any person shall land any *French* brandy, before the duty be paid or secured, or without licence from the proper officer so to do; he, and every person aiding therein, or concealing the same when landed, shall not only forfeit the same, but also double value. *1 Ann. st. 2. c. 14.*

And if any officer of the customs or excise shall connive thereat; he shall be incapable to hold any office in the revenue, and forfeit 500 l. *f. 2.*

4. And the officers of excise may go on board any ship or vessel, and search in like manner as the officers of the customs may do, for any exciseable liquors, and seize all such as shall be forfeited, and such as shall be unshipped before entry and payment of the duties, together with the casks and other package. *11 G. c. 30. f. 1.*

5. And if any officer of the excise have cause to suspect, that any foreign spirits shall be fraudulently concealed in any place, entred or not entred, if it is within the bills of mortality, then on oath made before two commissioners, if elsewhere, before one justice, where he suspects them to be concealed, setting forth the ground of his suspicion; he or they may by special warrant authorize such officer by day or night, but if in the night in presence of a constable, to enter, seize, and carry away the same as forfeited, together with the casks or vessels; and if any person shall obstruct such officer, he shall forfeit 100 l. *11 G. c. 30. f. 2.*

6. And by a general clause in the 8 G. c. 18. All brandy, arrack, rum, spirits, and strong waters, *British* or foreign, and all foreign exciseable liquors forfeited, together with the casks or other package, may be seized by any

Officers may take samples on ship-board.

Landing without duty paid.

Excise officers may go on board.

Warrant to search.

Who only may seize.

any officer of the customs, or excise, or persons deputed by warrant from the lord treasurer, or under treasurer, or by special commission under the great or privy seal, and no other person. *f. 24.*

Obstructing the officer.

7. And if any person shall obstruct any officer of the customs or excise, in seizing or securing any of the said liquors, or endeavouring to rescue them after seizure, or shall after seizure stove, or otherwise damage any cask, or vessel; he shall forfeit 40 l. 8 G. c. 18. *f. 25.*

Notice to be given of seizure.

8. But no person shall be intitled to any reward given on such seizure, unless he give notice to the next officer of excise, or to the supervisor, in 48 hours; who shall, on such notice, take an account of the species and quantity; nor shall such goods be afterwards removed without a permit from such officer of excise, on pain of being re-seized. 12 G. c. 28. *f. 6.*

In what ships to be imported.

9. If any foreign brandy, arrack, rum, strong waters, or spirits of any kind shall be imported, in any ship or vessel of 100 tons burden or under (except only for the use of the seamen, not exceeding two gallons each); such vessel with her tackle, and also the spirits, shall be forfeited. 5 G. 3. c. 43. *f. 27.*—Except rum, or other spirits of the growth and manufacture of the *British* sugar plantations; which may be imported in any vessel of not less burden than 70 tons. 6 G. 3. c. 46. *f. 9.*

And to prevent clandestine landing of spirits from *Ireland*; if any brandy, rum, strong waters or other spirits shall be entered or shipped for exportation from *Ireland* to any place not within the same kingdom, in any vessel under the burden of 100 tons (except only for the use of the seamen, not exceeding two gallons each); the said vessel with the tackle and furniture, and also all such spirits, shall be forfeited. 5 G. 3. c. 43. *f. 30.*

Ships hovering near the coast.

10. And where any vessel of 50 tons or under, being in part or fully laden with brandy, shall be at anchor, or within two leagues from the shore, and not proceeding on her voyage, wind and weather permitting; the commander of any man of war or armed sloop appointed for the guard of the coast, or the commander of any sloop or vessel in the service of the customs, may compel the master to come into port; and the same shall be liable in all cases as ships hovering within the limits of any port. 6 G. c. 21. *f. 31.*

And if the master, purser, or other person having charge of the vessel, shall suffer any brandy (or other accustomed goods) to be put out of the ship into any house, light

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ighter, boat, or bottom, to be laid on land; he shall, besides the other penalties, suffer six months imprisonment. 6 G. 2. c. 21. f. 32.

And by the 9 G. 2. c. 35. Where any vessel coming from foreign parts, and having on board any foreign brandy or spirits, in casks under six gallons (except only for the use of the seamen, not exceeding two gallons each) shall be found at anchor, or hovering within two leagues of the shore, or be within the limits of any port, and not proceeding on her voyage, wind and weather permitting; all such spirits, with the casks and other package, or the value thereof, shall be forfeited (whether the cask shall have been broken or not); and the same may be seized, or the value thereof sued for by the officers.

22. And if such vessel do not exceed the burden of 50 tons, the said vessel also, together with her tackle and furniture, shall be forfeited. 3 G. 3. c. 22. f. 5.

11. No brandy shall be imported in any vessel not containing 60 gallons at least; on pain of forfeiting the same, or the value. 4 W. c. 5. f. 8. In what casks to be imported.

And no *geneva*, or *rum*, shall be imported in any vessel or cask, not containing 60 gallons at the least (except only for the use of the seamen, not exceeding two gallons each); on pain of forfeiture. 5 G. 3. c. 43. f. 28.

Provided, that if it shall be made appear to the satisfaction of the commissioners of the customs, that any rum, being the produce of any of his majesty's dominions in America, shall be imported from thence in small casks, without fraud or concealment, either for the use of the master in the voyage, or for the private use of merchants or traders importing the same, or designed as presents, and not by way of merchandize; they may, if they think proper, admit such rum to an entry, and cause the duties to be accepted instead of the forfeiture. f. 29.

12. All rum or spirits of the growth or manufacture of the *British* sugar colonies (imported directly from thence) on entry made (within 30 days after report made by the master or purser of the contents and loading of the ship, 1 G. 2. c. 36. f. 5, 6.) and before payment of the duty, may be landed and put into warehouses, provided at the charge of the proprietor or importer, and approved of by the commissioners; the proprietor or importer first giving bond for payment of the duty, if it be sold (within 12 calendar months; and if it be not sold in that time, then to pay the duty at the end of 12 calendar months, 6 G. 3. c. 47. f. 4.) according to the gage taken at the time

Rum to be warehoused on importation.

of

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of landing and lodging in the warehouse. 15 G. 2. c. 25.
f. 10

And if any rum or spirits be landed, before entry at the custom house and with the collector of excise, and the duties secured, or without warrant for landing, or without the presence of an excise officer; the same shall be forfeited, or the value thereof. *f. 3.*

And before it be landed and lodged in the warehouse, a mark shall be set upon every cask, mentioning the quantity, and the proprietor or importer; and the warehouse keeper and excise officer shall each keep a book, and enter the particulars carried in or out, and when, and for what use delivered; and every six months, or oftner if required, transmit an account thereof in writing, and on oath, to the commissioners of excise, who shall in one month examine the same: and if any rum or spirits shall be delivered contrary to this act, the warehouse keeper or officer of sending shall be disabled from holding any publick employment, and forfeit 100*l.* *f. 4.*

And the rum or spirits may be delivered out of the warehouse, on payment of the excise, and on producing to the warehouse keeper, and the excise officer attending the warehouse, a certificate of such payment; and the warehouse keeper shall give a permit therewith, signed by the excise officer, to prevent the seizing thereof. *f. 5.*

But no proprietor, importer, or buyer, shall receive out of the warehouse less than one vessel of 20 gallons, unless for the use of seamen in a voyage. *f. 6.*

And the proprietor or importer may fix a lock on the warehouse and keep the key; and the excise officer may put on another, and keep the key; and the proprietor or importer may in presence of the warehouse keeper, or excise officer, at all reasonable times, view, and take out as aforesaid. *f. 7.*

And if any rum or spirits remain in the warehouse above (12 calendar months, 6 G. 3. c. 47. *f. 4.*) without paying the duty, the commissioners of excise may sell them by auction, and pay themselves the duty and charges, rendering the overplus to the proprietor or importer. *f. 9.*

13. For every gallon of spirits made of imported wine or cyder, shall be paid in the whole sum of 1*s* 3*d.*

For every gallon of strong waters or aqua vitæ, made of any other materials, 7½*d.*

If from foreign or from home materials mixed with foreign; then a further duty of 6*d.*

Duty on home
 spirits.

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If from brewers wash or tilts, $5\frac{1}{2}$ d.

If from drink brewed of malted corn, $5\frac{1}{2}$ d.

If from other *British* materials, or any mixture therewith, 5 d.

For every gallon of low wines or spirits of the first extraction, made from foreign materials, 1 s 7 d.

From brewers wash or tilts, 1 s 4 d.

From drink of malt, 5 d.

From any other *English* materials, 7 d.

But low wines or spirits of the first extraction drawn from melasses only, shall be liable only to 1 s a gallon; and all spirits from low wines, or spirits of the first extraction, drawn from melasses only, shall be chargeable with 1 d a gallon. 19 G. 2. c. 12. s. 37.

Note; All spirits drawn by any distiller from any mixture of spirits with any kind of wash or other liquor (except common water) shall be deemed low wines, and chargeable with the duties imposed on low wines drawn from foreign materials. 10 & 11 W. c. 4. s. 9.

Moreover by the 33 G. 2. c. 9. an additional duty is paid as follows:

For every gallon of low wines, or spirits of the first extraction, made from any sort of drink or wash, brewed or made from any sort of malt or corn, or from brewers wash or tilts, or any mixture with brewers wash or tilts, 3 d. s. 2.

For every gallon of strong waters or aqua vitæ, made for sale, of the materials aforesaid, or any of them, 1 s 3 d. s. 3.

For every gallon of low wines or spirits of the first extraction, made from any foreign or imported materials, or any mixture therewith, 1 s 3 d. s. 4.

For every gallon of spirits, made from any foreign, or imported materials, or any mixture therewith, 8 d. s. 5.

For every gallon of low wines or spirits of the first extraction made from cyder or any kind of *British* materials, except those before mentioned, or any mixture therewith, 6½ d. s. 6.

For every gallon of spirits, made for sale, from cyder or any kind of *British* materials, except those before mentioned, 1 s 1 d. s. 7.

And by the 2 G. 3. c. 5. There shall further be paid, for spirituous liquors made for home consumption, or imported (not being the produce of the *British* colonies), these several additional duties:

For every gallon of low wines or spirits of the first extraction, made from any sort of drink or wash brewed, or

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or made from any sort of malt or corn, or from brewer's wash or tilts, or any mixture with brewer's wash or tilts, 1 d.

For every gallon of strong waters or aqua vitæ, made for sale, of the materials aforesaid or any of them, 3 d.

For every gallon of low wines or spirits of the first extraction, made from any foreign or imported materials, or any mixture therewith, 3 d.

For every gallon of spirits, made from any foreign or imported materials, or any mixture therewith, 2 d.

For every gallon of low wines or spirits of the first extraction, made from cyder, or any kind of *British* materials (except those before mentioned) or any mixture therewith, 1½ d.

For every gallon of spirits made for sale, from cyder, or any kind of *British* materials (except those before mentioned), 2 d.

For every gallon of single brandy spirits or aqua vitæ imported (not being the produce of the *British* colonies), 6 d.

For every gallon of brandy spirits or aqua vitæ above proof, commonly called double brandy, imported, not being the produce of the *British* colonies, 1 s. f. 1.

Note; Spirits made for *exportation* shall be duty free (as will appear afterwards).

Concerning distillers.

14. Any person who shall set up any work or office for that purpose, and thereof shall give notice to the commissioners of excise in ten days, may distill for sale, or to be retailed, any low wines or spirits from drink brewed from malted corn or cyder, and rectify and refine any such spirits of their own making only, paying duties and subject to the same regulations as other distillers. 8 & 9 W. c. 19. f. 13.

And by the 12 An. st. 2, c. 3. Any person may distill brandy or spirits made from *British* malt or cyder, altho he hath not served seven years apprenticeship. f. 9.

And by the 2 G. 3. c. 5. Every person who shall sell or deal in any liquors which are chargeable with any duty of excise, and who shall also make or distill any spirits, shall be deemed a common distiller for sale, and liable to the survey and duties. f. 4.

Size of the stills.

15. By the 33 G. 2. c. 9. For the more effectually securing the duties upon spirits, every person keeping any wash, cyder, or other materials fit for distillation, and having in his possession any still or stills, containing separately or together ten gallons or upwards; proof being made thereof by the oath of one witness before a commis-

tioner of excise or justice; shall be deemed a common distiller for sale, and liable to the several duties of excise, and to the survey of the officers. *f.* 21. And by the 12 G. 3. c. 46. Whereas doubts have arisen, whether by the word *still* in this clause, the body of the still, exclusive of the head thereof, is to be understood, it is declared and enacted, that every still, the cubic contents whereof when the head is on, will amount to ten gallons or upwards, is a still within the meaning of the said act. *f.* 9.

But by the 2 G. 3. c. 5. No person who shall make or rectify any spirits for sale, or who shall sell or deal in any sort of spirituuous liquors, shall have any still or number of stills, unless such still if a single one, or such stills taken together if more than one, shall contain at the least 100 gallons; on pain to forfeit for every such still 100 l. And such stills as shall contain separately less than 100 gallons, shall be all placed in one room or workhouse; on pain to forfeit for every such still not so placed, 100 l. *f.* 4.

And by the 14 G. 3. c. 73. Every still for distilling any sort of fermented worts or wash, commonly called the wash still, shall contain at least 400 gallons in the body of the still, exclusive of the head; and every still for distilling low wines, commonly called the low wine still, shall contain in the body thereof, exclusive of the head, at least 100 gallons: on pain of forfeiting, for every still containing respectively a less number of gallons, 100 l. *f.* 2.

16. No common distiller or maker of low wines, spirits, or strong waters, for sale, shall set up any tun, cask, washbatch, copper, still, or other vessel, for making or keeping any worts, wash, low wines, spirits, or strong waters, nor alter nor enlarge the same, nor have any of them private or concealed, or any private warehouse, storehouse, cellar, or other place for making or keeping any the said liquors, without first giving notice at the next office of excise; on pain of 20 l, and he in whose occupation any of the same shall be, shall forfeit 50 l. 8 & 9 W. 19. *f.* 10.

Entry to be made of houses, stills, and vessels.

And if any officer of excise shall have cause to suspect any such private still, back, or other vessel, spirits, low wines, wash or other materials prepared for distillation, to be set up or kept in any place, and shall make affidavit before a justice of the peace, and therein declare the grounds of his suspicion; he may in the day time, and in presence of a constable, by warrant from such justice to be directed to such officer of excise, break open the door or any part of each suspected house or place, and enter and seize the same,

and detain them there; and if they shall not in 20 days be claimed by the owner, they shall be forfeited, and sold at the next general day of sale; and if they be claimed in 20 days, the person claiming shall forfeit for every warehouse or other place, in which any such still, back, or other vessel shall be found, and also for every such still, back, and other vessel found therein, 200 l. 10 & 11 W. c. 4. s. 7. And by the 10 & 11 W. c. 21. he shall incur this forfeiture, whether he shall make any such claim or not. s. 23.

But if on breaking open any such door or house, no such private back, still, or other vessel, spirits, low wines, wash, or other materials for distillation, shall be found, the officer shall make good the house or place so broken up, or make satisfaction to the owner to be adjudged by the two next justices (1 Q.); or the party injured may bring his action for the damages; and the same shall be paid by the commissioners out of the revenue of excise; and if any person shall obstruct such officer, he shall forfeit 200 l. 10 & 11 W. c. 4. s. 8.

Vessels to be
marked by the
gager.

17. Every distiller shall ten days before he distills or makes any spirituuous liquors, make entry at the next office of excise, of every still or other vessel which he shall make use of for brewing, distilling, working, making, laying or keeping any worts, wash, low wines, spirits, or strong waters; and also of the vessels used for brewing or keeping of the after runnings of feints from the second extraction (which last mentioned vessels shall not at any one time exceed two in number) and also of all such new utensils as they shall make use of for the purposes aforesaid, on pain of 50 l for every such still or other vessel, used and not entred: And the distiller shall shew to the officer every still or other vessel entred, and the officer shall mark the same with a partioular and durable mark; and every vessel used by such distiller without being so shewn or marked, shall be deemed a vessel or utensil of which no entry has been made; and if any person shall rub out or deface such mark, he shall forfeit 20 l. 24 G. 2. c. 40. s. 22.

Private cocks
and pipes.

18. No distiller shall have any private pipe or stop cock, or other conveyance, by which any wash or other liquors fit for distillation may be conveyed from one back or vessel to another, or from any such back or vessel to his still, or into any other place, nor shall have any hole in any back or washbatch, by which any wash or other liquor fit for distillation may be conveyed into or out of the same; on pain of 100 l. 10 & 11 W. c. 4. s. 3.

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And the excise officer in the day time, and in presence of a constable, on request made and cause declared, may break up the ground in any distilling house, or the ground near adjoining, or any wall, partition, or other place, to search; and on finding such pipe or other conveyance, may break up the ground, house, wall, partition, or other place, thro' or into which any such pipe or other conveyance shall lead, and may break or cut any such pipe or other conveyance, and may turn any cock to try whether such pipe may convey any wash or other liquor. *f. 4.*

And if no such pipe or private conveyance be found, the officer shall make good the ground, wall, house, or other place, or make reasonable satisfaction to the owner, to be adjudged by the two next justices (1 *Q.*) or the party injured may bring his action for damages; the same to be paid by the commissioners out of the revenue of excise. And if any person obstruct such officer, he shall forfeit 100*l.* *f. 5.*

But any distiller may use any pipe, stop cock, or other conveyance above ground, in open view from one end to the other, for letting his wash out of the coolers into his backs or washbatches, and for conveying the wash or worts, out of the back or washbatch into the still. *f. 6.*

19. Every distiller, rectifier, and compounder shall make (with the approbation of the surveyor or supervisor) a hole or opening in the breast of every still, that the officers may take gages and samples; which hole or opening in the wash still shall not be more than five inches square, and so contrived, that the officers may take gages thereof with a cork and rule: and in every other still, not being a wash still, the hole or opening shall not be less than one inch and an half in diameter, and so contrived, that the officers may take samples from the still with a phial, to be drawn perpendicularly through the same. And if he shall presume to distil, rectify, or compound any spirits, before such holes or openings be made; he shall forfeit 50*l.* 14 *G. 3. c. 73. f. 3, 5.*

Holes or openings to be in the breast of the still.

20. Every distiller, rectifier, and compounder, shall at his own expence, provide and affix sufficient fastenings (to be approved of in writing under the hand of the gager or supervisor) to the head of every low wine still, wash still, wash pumps, and charging cocks, through which worts or wash are conveyed into such still: Which said still heads, charging cocks, and wash pumps, shall from time to time be securely locked and sealed by the gager; and

Locks on the still heads.

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and the locks and keys, for securing the said still heads, charging cocks, and wash pumps, shall be provided by the gager or supervisor, at the expence of the distiller. And if the distiller shall presume to distil, before he hath affixed such fastenings; he shall forfeit 50*l*. 12 G. 3. c. 46. *f*. 11, 17. 14 G. 3. c. 73. *f*. 1.

Locks on the
holes or open-
ings.

21. And the holes or openings in the breast of the still shall in like manner be locked and secured, under the same rules, regulations, and penalties as for securing the still heads. 14 G. 3. c. 73. *f*. 3, 5.

Locks on the
discharge cocks.

22. Every distiller shall (on the like pain) at his own expence, provide and affix sufficient locks, keys, and fastenings (to be approved of in writing under the hand of the surveyor or supervisor) to the discharge cock of every wash still and low wine still; and the officers shall be permitted, if they see cause, to lock and secure such discharge cocks at any time when the still shall be at work. 14 G. 3. c. 73. *f*. 5.

Locks on the
furnace door.

23. Every distiller, rectifyer, and compounder shall, on the like pain, at his own expence provide and affix sufficient locks, keys, and fastenings (to be approved of in like manner) to the furnace door of each still; and the officers shall be permitted to lock and secure the said furnace doors, at any time when the stills are not at work. 14 G. 3. c. 73. *f*. 4, 5.

Penalty of open-
ing or damaging
such locks.

24. If any person shall, by any means or device, open any fastening on the holes or openings in the breast of the still, or any discharge cock, or furnace door, after the same shall have been locked or secured by the officers; or shall wilfully hurt or damage any lock or other fastening; he shall forfeit 200*l*. 14 G. 3. c. 73. *f*. 12.

Notice of taking
in materials.

25. The distiller, within the bills, shall 24 hours at least, and elsewhere 48 hours, before he receive any quantity of wine, cyder, sugar, water, or any kind of fermented wash, into his custody, give notice to the officer of excise, of the quantity and species, and when he intends to receive the same; on pain of 50*l*. 24 G. 2. c. 40. *f*. 24.

And by the yearly malt acts, every distiller who shall receive any quantity of cyder or perry into his custody, shall give notice in writing to the officer under whose survey he shall reside, 48 hours before he shall begin to put any of the same into the still, to be drawn into low wines or spirits; and if he shall not give such notice, or shall dispose of any quantity thereof otherwise than by distillation, he shall forfeit 5*l*.

Notice of begin-
ning to work.

26. When any distiller or maker of low wines and spirits from *corn or grain*, whose still house is under the survey

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Survey of the London officers, or is situate in London or Westminster or within any other city, shall be desirous of opening his still, or of charging his wash still; he shall give to the officer notice in writing at least four hours before he intends to charge his still: But if he intends to open or charge it at any time between 12 in the night and 6 in the morning, he shall give notice at least twelve hours before he intends so to open his low wine still or wash still. And where the still house is not situate in London or Westminster, nor under the survey of the London officers, nor in some other city, he shall give at least twelve hours notice in writing at the next office of excise or to the officer of the district, of such his intention of opening or charging his still. And if he shall not begin to charge his still at the hour mentioned in such notice, or within two hours after, the notice shall be void; and he shall be obliged to give a fresh notice, before the officer shall be bound to open the head of such still, or the said charge cocks, or wash pumps, so locked as aforesaid. 12 G. 3. c. 46. f. 12, 13.

And the like notice shall be given, when such corn distiller shall be desirous to have the furnace door of his still unlocked. 14 G. 3. c. 73. f. 6.

And when any distiller or maker of low wines or spirits from molasses, or other materials not being corn or grain, or any rectifier or compounder of spirits, shall be desirous to charge his wash still; he shall, within the bills, give to the officer notice in writing four hours at least, and elsewhere eight hours, of the particular hour or time of the day, when he intends to charge such still: And when he is desirous to have the furnace of his still opened; he shall, if within the bills, give twelve hours notice, and elsewhere 24 hours, of the particular hour or time of the day or night, when he intends to have the same opened. Which notices for charging the wash stills of such distillers of molasses or other materials not being corn or grain, and also for opening the furnace doors, shall be given at the times following; viz. from Sept. 29, to Mar. 25, yearly, between the hours of seven in the morning and five in the evening; and from Mar. 25, to Sept. 29, between the hours of five in the morning and five in the evening.—And if such distiller shall not begin to charge his wash still at the time mentioned in such notice, or within one hour after; the notice shall be void, and he shall be obliged to give another like notice, before the officer shall be obliged to attend. 14 G. 3. c. 73. f. 6.

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And every distiller, in the notice of his intention to charge his wash still, shall express the particular washbatch or washbatches from which he intends to charge his still, describing the number and marks thereof; otherwise the notice shall be void. And if he shall charge his wash still from any washbatch not mentioned in such notice; or shall take out of any still any feints or spent wash contrary to the directions of this act: he shall forfeit 100*l.* 14 G. 3. c. 73. f. 8.

What proportion
of wheat to be
used.

27. If any distiller, in preparing his grist for wash, in order for distillation, shall use more wheat, than in the proportion of one quarter of wheat to two quarters of any other grain; he shall forfeit 50*l.* 33 G. 2. c. 9. f. 23.

Officer to attend
and survey.

28. And the officer shall from time to time attend, according to the notice given. 12 G. 3. c. 46. f. 14.

Provided, that where notices are given by more than one distiller, rectifier, or compounder, each of them expressing the same hour or time for the officer to attend; it shall be sufficient, if he attend at the workhouse of any one of them, according to the notice, or within one hour after. 14 G. 3. c. 73. f. 11.

And as soon as the officer shall be at the still house, the distiller shall turn the discharge cock of every wash still, that the officer may be satisfied that such wash still is really empty; and then, and not before, the officer shall open the stills, cocks, and pumps so locked and secured, and shall continue in the still house all the time that such wash still shall be charging; and when the same shall be fully charged, shall immediately lock and secure as before, all the still heads, wash pumps, and charging cocks, and shall leave them so locked and secured at all times. 12 G. 3. c. 46. f. 14.

And so often as it shall be found necessary to have such still heads, or charge cocks, or wash pumps open, for repairing or mending the same; the officer shall attend all the time the workmen shall be employed in such repairing; and shall lock the same every night; and shall attend at six o'clock each morning, whilst the repairs are doing, to open the said stills, charge cocks, and pumps. f. 15.

And no such distiller shall have any pipe or conveyance to the low wine stills, from any other vessel or utensil, except the known and entred low wine cask; on pain of 100*l.* f. 16.

And if any person shall open any still head, charge cock, or wash pump, after the same shall have been locked and secured as aforesaid, before the same shall have been opened

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opened by the officer of excise ; or shall wilfully hurt or damage any such lock or other fastening ; he shall forfeit 200 l. *f. 18.*

And by the 14 G. 3. c. 73. Whenever the distiller shall be desirous to light a fire under the still, and to have the furnace door opened ; the officer shall attend according to the notice given, and open the same. *f. 4.*

And he shall be permitted to take still gages, as well of spent wash and feints, as of the charge of the wash still, at any time after the still is charged, and before it comes to work ; and also to take samples of the same at any time after the still is charged and before it comes to work, and also after the still is off, paying, if demanded, after the rate of 1 s 6 d a gallon for the wash, and 4 d a gallon for spent wash and feints. And if, in taking such gage or sample, he shall discover that any wash hath been put into any still except the known wash still, or into the wash still without such notice as aforesaid ; or shall find any increase in such still, more than can be accounted for by the compare with the decrease from the washbatch expressed in the notice ; or if, on comparing the quantity of low wines charged, with the spent wash remaining in the wash still, he shall find a greater proportion than could arise from the quantity of wash taken account of in the washbatches pumped into the wash still : such increase shall be deemed to be made from some washbatch not mentioned in the notice, and the officer shall charge the distiller with double duty from the presumptive charge ; and no allowance shall be made to him for any feints, water, or other liquor, on any pretence put into the wash still, but such as shall have been put therein in the view of the officer. *f. 9.*

And if the officer shall discover at the still house, in any still other than the known wash still, any wash put into or mixed with the low wines or spirits in such still ; every distiller, rectifier, or compounder offending herein, shall forfeit 100 l. *f. 10.*

And if any person shall obstruct any officer in the execution of this act, he shall forfeit 100 l. *f. 13.*

By the 6 G. c. 21. The excise officer, by day or night (but if in the night, in presence of a constable) may enter into all houses and places made use of by distillers or dealers in the said liquors, and by tasting, gaging, or otherwise, may take an account of the quantity and quality ; and if such person shall obstruct the officer, he shall forfeit 50 l. 6 G. c. 21. *f. 14.*

Concealing from
the gager.

29. If the distiller or maker shall conceal any the said liquors from sight of the gager, he shall forfeit 5 s a gallon.
3 *W. c. 15. f. 2.*

Officer to charge
for materials
missing.

30. The officer may keep an account of the several sorts of wash which shall be found by him in the hands of a distiller, and upon any decrease of such wash brewed or made from malted corn or corn unmalted, may charge such distiller with so much low wines or spirits of the first extraction as one fourth part of the same wash so decreased shall amount unto; and also with so much proof spirits or spirits of the second extraction, as three fifth parts of the said low wines so charged shall amount unto: and also upon any decrease of wash made from cyder or perry, may charge such distiller upon whom such decrease shall be found, with so much low wines or spirits of the first extraction, as one fifth part of the same wash so decreased shall amount unto; and likewise with so much proof spirits, or spirits of the second extraction, as one half part of the same low wines or spirits of the second extraction shall amount unto. 4 *An. c. 12. f. 4.*

Carrying out of
the still house.

31. No distiller shall deliver or carry out any low wines, spirits, or aqua vitæ, to any of their customers, in cask, or by the gallon, without notice thereof first given to the officer of excise, unless from *Sep. 29, to Mar. 25*, yearly, between five in the morning and eight in the evening, and from *Mar. 25, to Sep. 29*, yearly, between three in the morning and nine in the evening; on pain of 10 l. 7 s & 8 *W. c. 30. f. 15.*

Selling on ship-
board.

32. Whereas till of late the importers or proprietors of foreign spirituous liquors, or their factors or agents, were permitted to take samples and land the same without duty paid, whereby they were enabled and did for the most part sell such foreign spirituous liquors whilst on shipboard; and whereas for some time last past, such permission hath been refused, which hath proved a great inconvenience to the said trade; it is enacted, that it shall be lawful for the importers or proprietors of such foreign spirituous liquors, their factors or agents, to take, in the presence of a gager or other excise officer, a sample or samples, not exceeding half a pint in the whole, out of every cask or other package, whilst the same shall be on shipboard; and before landing, without paying any duty for the same. 32 *G. 4. c. 29. f. 1.*

Retailers houses
to be entered.

33. Every person who shall retail less than two gallons, shall ten days before make entry in writing of all warehouses, shops, cellars, or other places by him intended to be

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be used, at the next excise office; and of all spirituous liquors therein; on pain of 20 l for every place, and 40 s for every gallon not entered, and also the liquors and casks.

9 G. 2. c. 23. f. 6.

34. And no spirituous liquors shall be brought into any such warehouse or other place, without first giving notice to the officer of excise: and leaving with him an authentic certificate, that all the duties are paid, or that they have been condemned as forfeited, and expressing the quantity and quality, the name of the seller, and where the duties were paid, or the liquors condemned; on pain of 20 l, and the liquors and casks. 9 G. 2. c. 23. f. 7.

Retailer to give notice of bringing in.

35. No *foreign* brandy or spirits, altho' under one gallon shall be received into the custody of any retailer, without a permit signifying that the duties were paid, or that it had been condemned; on pain of forfeiting the same, and the vessel. 8 G. c. 18. f. 13.

Permit on bringing in.

36. All dealers in foreign brandy or spirits, who shall receive into their custody *British* spirits, shall keep the same in separate cellars, or other places, from their foreign brandy or spirits; on pain of 10 s for every gallon of *British* spirits found in the same place with the foreign spirits, together with the casks in which the said *British* spirits shall be found. 8 G. c. 18. f. 11.

British to be kept separate from foreign spirits.

37. It shall be lawful for the officers of excise, to take samples, not exceeding half a pint in the whole, out of each cask or other package containing foreign spirituous liquors, in any shop, warehouse, or other place, belonging to any dealer in the same; paying for such sample (if demanded) according to the market price liquor of the like quality shall be sold for at the time of such sample taken. 32 G. 2. c. 29. f. 2.

Officers may take samples in the shop or warehouse.

38. No retailer shall make any increase of the liquors, after they have been taken account of by the officer, by any private addition thereto of water or other liquor; on pain of 40 s a gallon, and the liquors so mixed shall be seized and forfeited. 9 G. 2. c. 23. f. 8.

Retailer increasing the liquors.

And if the officer of excise shall find any increase of *foreign* spirits, over and above the quantity which he found at any dealer's on the last survey, such increase shall be deemed to be made by foreign spirits for which no duty was paid; and so much as shall be found increased, shall together with the cask be forfeited, unless the owner make it appear, that the increase was made by mixing therewith in the presence of the officer of the division, some of his stock of *British* spirits whereof the officer had taken an account,

count, or by foreign spirits brought with a permit, or that it had been condemned and brought in on due notice given to the officer. 8 G. c. 18. f. 12.

Retailer con-
cealing.

39. The officers at all times by day or night (but if in the night in presence of a constable, oath being first made before a justice dwelling near of a probable cause of suspecting a concealment) may enter into all such warehouses, shops, or other places, and by tasting, gaging, or otherwise, take an account of the quantity and quality; and if any such retailer shall hinder the officer, he shall forfeit 50l. 9 G. 2. c. 23. f. 9.

None to be sold
but in entered
places.

40. And no such liquors shall be sold, but in such warehouse, shop, cellar, or other place, so entered; on pain of 40s a gallon. 6 G. c. 21. f. 15.

And by the 11 G. c. 30. No *arrack*, whether *British* or foreign, shall be offered to sale, either by wholesale or retail, but in an entered place; on pain of forfeiting the same, with the casks or other vessels, besides the said penalty of 40s a gallon. f. 3.

Who shall be
deemed a seller
and dealer.

41. Every person who shall have in his custody above 63 gallons, shall be deemed a seller and dealer in such liquors. 6 G. c. 21. f. 18.

Licence for re-
tailing.

42. No person shall retail any distilled spirituous liquors or strong waters, mixed or unmixed, without a licence taken out ten days before, for which he shall pay 40s yearly; if within the bills, from two commissioners of excise; elsewhere, from the collectors and supervisors within their respective districts. 16 G. 2. c. 8. f. 8. 24 G. 2. c. 40. f. 9.

And every person who shall retail spirituous liquors mixed or unmixed, to be drank in any quantity whatsoever, in any place to him belonging; or shall retail or send the same abroad in less quantity than two gallons, shall be deemed a *retailer*. 17 G. 2. c. 17. f. 20.

Who only shall
have licences.

43. And no such licence shall be granted, except to such persons only who keep taverns, victualling houses, inns, coffee-houses, or alehouses; and all other licences shall be void; and if any licensed person shall exercise the trade of a distiller, grocer, or chandler, or keep a brandy shop for sale of spirituous liquors, the licence shall be void. 17 G. 2. c. 17. f. 19.

And no licence shall be granted within the limits of the head office of excise in *London*, but to such as occupy tenements of 10l a year, and pay parish rates for the same; or in places where the occupiers of houses are not rated to the church and poor, then to such persons as pay rent

of 12 l a year, and not otherwise; nor to persons in any other part of the kingdom, but such as pay to the church and poor: And no licence shall be of any avail longer than he shall be so qualified. 24 G. 2. c. 40. f. 12. 26 G. 2. c. 13. f. 9.

44. And such person shall also be first licensed to sell ale or spirituous liquors, by two or more justices of the peace. 16 G. 2. c. 8. f. 11. To be first licensed to sell ale.

And the justices of the peace, and other officers, shall have the same jurisdiction over such retailers of spirituous liquors, as they have over alehousekeepers. 12 & 13 W. c. 11. f. 18. 2 G. 2. c. 28. f. 10.

45. And no licence shall empower any person to sell spirituous liquors in any place, except in the house or places thereto belonging, wherein they shall inhabit at the time of granting the licence. 17 G. 2. c. 17. f. 22. To be licensed only where they dwell.

46. Persons retailing without licence shall forfeit 10 l, and on nonpayment when demanded, one justice on oath of such neglect shall commit the offender to the house of correction, to be kept to hard labour for two months, or till paid. 16 G. 2. c. 8. f. 9. Penalty of selling without licence.

And the said penalty shall in no case be mitigated below the sum of 5 l. 24 G. 2. c. 40. f. 11. 26 G. 2. c. 13. f. 8.

And the justices may, if they think proper, instead of levying the penalty commit the offender to the house of correction, to be kept to hard labour for two months. 17 G. 2. c. 17. f. 18. 9 G. 3. c. 6. f. 3.

And also all the distilled spirituous liquors that shall be then, or at any time within six months after conviction, found in his custody, house, or other place occupied therewith, whether it be in his own occupation or not, shall by warrant of the said commissioners, or of one justice, be seized, and staved, or otherwise destroyed: And any peace or parish officer, authorized by such warrant, may at any time in six months after conviction enter such places, and break open doors, if not opened on demand. And if any person shall offend again in like manner, the commissioners or justices before whom he shall be convicted of such subsequent offences, may inflict the penalties by any former law to be inflicted for such offence, and also commit the offender to the house of correction, to be kept to hard labour not exceeding three months. 24 G. 2. c. 40. f. 13. 9 G. 3. c. 6. f. 3.

And the conviction shall be in this form, or to the like effect, viz.

Middlesex.

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Middlesex. A. B. is convicted on his own confession (or on the oath of A. W.) of having sold strong waters in the parish of ——— in this county, on the ——— day of ——— without being duly licensed thereto: This is the first or second conviction. Given under my hand and seal, &c.

And the commissioners, or one justice, on oath of any offence against this act, or any other act for regulating the retailing of spirituuous liquors, may grant a warrant to any of the peace officers, or other parish officers, to enter and search the houses and other places, where the offence shall be sworn to have been committed, or in the occupation of the persons sworn to be guilty thereof, and they may break open the doors if not opened on demand, and seize all such distilled spirituuous liquors as they shall there find, and detain the same, till the offence shall be heard and determined; and if the offender be convicted, the liquors shall be forthwith staved; and if he be not convicted, the same shall be restored. 24 G. 2. c. 40. f. 14.

And whereas the aforesaid penalty of 10 l is sometimes insufficient to deter offenders, it is enacted by the 13 G. 3. c. 56. that if any person shall, by himself, or by any other to his benefit, retail any distilled spirituuous liquors without licence; he shall forfeit 50 l: To be recovered, levied, and mitigated by any law of excise, or in the courts at Westminster. Provided, that no person prosecuted by any former act, shall be prosecuted for the same offence by this act.

Hawking in the streets.

47. No person shall hawk, sell, or expose to sale any spirituuous liquors about the streets, highways, or fields, in any wheel-barrow or basket, or on the water in any boat, or in any other manner; or shall sell or expose the same to sale, on any bulk, stall or shed, or any other place other than as above is allowed; on pain of 10 l. And one justice on his own view, or confession, or proof of one witness, may convict him; whereupon he shall immediately pay the 10 l to a churchwarden or overseer: And on refusal or neglect, the justice shall commit him to the house of correction to be kept to hard labour for two months to be reckoned from the day of commitment; and he shall not be discharged till he pay the sum, or till the two months be expired. If there is no informer, it shall be wholly to the use of the poor; otherwise half to the informer, and half to the poor. 9 G. 2. c. 23. f. 13.

And any one justice, on information on oath against such person, may (without any previous summons) issue his

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his warrant for apprehending and bringing him before some justice where the offence was committed, 11 G. 2. c. 26. f. 4.

And any person may seize and detain him, until he may give notice to the constable, churchwarden, overseer, or other peace or parish officer; who shall carry the person so seized and detained, before a justice of the peace, who shall proceed thereon as in case where he is brought by the constable. 11 G. 2. c. 26. f. 5.

M. 13 G. 2. *Ki and Crofts*. A woman was convicted for selling gin, and it appearing that she was a feme covert, it was objected that she could not be convicted, for as she could make no contract, it must be taken to be her husband's sale; or if she could be convicted, the husband ought to have been joined for conformity. It was answered, that where the crime is of such a nature, as can be committed by her alone, she may be prosecuted without her husband; which being a proceeding grounded merely on the breach of the law, he shall not be included, unless privy: In this case there may be imprisonment and being kept to hard labour. And by the court, We think the conviction is right; for this is not like the cases that sound only in damages. The wife may be convicted for recusancy. And though she cannot have the benefit of the contract, yet she as well as the servant may do the act of vending. Besides, there would be a plain way to evade the act, if femes covert could not be convicted. *Str.* 1121.

48. If any less quantity than two gallons shall be sold or delivered in any clandestine manner, to any person, in any house, outhouse, stable, barn, shed, or other place, part of or belonging to any house or farm; in such case, the occupier or occupiers (if more than one) consenting thereto, shall be deemed retailers, and forfeit as selling without licence. 11 G. 2. c. 26. f. 1.

Occupier of the house shall be liable.

49. Persons giving away spirituuous liquors, to servants or apprentices fetching goods from their shops, shall be deemed retailers. 9 G. 2. c. 23. f. 16.

Persons giving away spirituuous liquors.

50. If any master or other person shall agree to pay any workman, servant, or labourer, or other person employed by him or for him, so much money for wages, and so much spirituuous liquors, as together with the money shall amount to the value of the wages usually paid in like cases; or shall set off or deduct any part of the wages, for any spirituuous liquors; he shall be deemed a retailer, and forfeit 20 l, over and above the other penalties, and such

Paying wages in spirituuous liquors.

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Apothecaries
selling spirituous
liquors.

Selling in gaols
or workhouses.

such servant shall be intitled to his whole wages. 9 G. 2. c. 23. f. 11.

51. But nothing herein shall extend to physicians or apothecaries selling the same as medicines. 9 G. 2. c. 23. f. 12. 16 G. 2. c. 8. f. 12.

52. No licence shall be granted for retailing of any spirituous liquors, within any gaol, prison, or house of correction, workhouse, or house of entertainment for parish poor; and if any keeper of such prison or house shall sell, use, lend, or give away, or knowingly suffer any spirituous liquors or strong waters to be sold, used, lent, or given away in any such gaols or houses, or brought into the same, except such as shall be prescribed by the direction of a regular physician, surgeon, or apothecary, from the shop of some regular apothecary,----he shall forfeit 100l, half to the king, and half (with full costs) to him who shall sue in the courts at *Westminster*. And if any such person shall offend again in like manner, and be a second time convicted; he shall forfeit his office. 24 G. 2. c. 40. f. 17.

And any justice, on information on oath that spirituous liquors or strong waters are kept and disposed of in any such prison or other place, may enter and search, or impower by warrant any constable to search for and seize all such liquors as shall be found (except such as are directed to be used medicinally), and to stave and destroy the same. f. 18.

And if any person shall bring, or endeavour to bring any such liquors (except in the way of medicine as before mentioned) into any such gaol or other place, the gaoler or his servants may apprehend and carry such offender before any justice of the peace, who shall hear and determine such offence in a summary way; and if by the oath of one witness, or otherwise, such person shall be convicted, he shall be committed to prison or to the house of correction, not exceeding three months, unless he shall immediately pay down such fine not exceeding 20l, and not less than 10l, as the justice shall impose, to be paid half to the informer, and half to the poor of such prison or workhouse. f. 19.

And the gaoler, keeper, master, or other officer, shall procure a copy of the three preceding clauses, to be printed or fairly written, and hung up in one of the most publick places of his gaol, house of correction, or workhouse aforesaid, and renew the same from time to time, so that it be always kept fair and legible; on pain of 40s, by warrant

warrant of one justice, on oath of one witness. And any justice may enter and demand a sight of it, and if it shall not be shewn to him hung up in some public place fair and legible; he shall immediately convict such person, and so from time to time as often as he shall think fit: half to be to the informer, and half (or the whole if there be no informer) to the poor of such gaol or other place.

53. No person shall recover any debt on account of spirituous liquors, unless it shall *bona fide* have been contracted at one time to the amount of 20 s or upwards; nor shall any particular article in any account be allowed, where the liquors delivered at one time, shall not amount to the full value of 20 s, and where no part of the liquors so sold shall be agreed to be returned; and if any retailer, with or without a licence, shall take any pawn by way of security for payment of any money for such liquors, he shall forfeit 40 s, by warrant of one justice, half to the poor, and half to the informer; and the owner shall have such remedy for recovering such pawn, as if it had never been pledged. 24 G. 2. c. 40. f. 16.

Recovering debt for spirituous liquors.

54. If any distiller or other person shall knowingly sell or deliver any distilled spirituous liquors, that the same may be unlawfully retailed, or to any unlicensed retailer; he shall forfeit 10 l, and treble value of the liquors, half to the king, and half to him that shall sue in the courts at *Westminster*. And if any person guilty of retailing such liquors, shall discover the distiller or person who knowingly supplied him therewith, and prosecute him to conviction, he shall be intitled to his share of the penalty, and indemnified against all penalties incurred by him before that time, for selling spirituous liquors without licence. 24 G. 2. c. 40. f. 15.

Distiller delivering to unlicensed retailers.

55. If any persons to the number of five or more, shall in a tumultuous and riotous manner assemble to rescue any offenders against any act relating to spirituous liquors, or for licensing the retailers thereof, or to assault any person who shall have given or is about to give any information against, or shall have discovered or given evidence against, or shall seize or bring to justice any offender; he, his aiders and abettors, shall be guilty of felony, and transported for seven years. 24 G. 2. c. 40. f. 32.

Riotously rescuing offenders, or assaulting informers.

56. Where any such liquors shall be sold in any such entered place, the officer shall on request of the feller (without fee) give the buyer a certificate signed by him, expressing the quantity, the name of the buyer and seller, and

Permit for removal after sale.

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and that the duty hath been paid, or that it hath been condemned as forfeited. 6 G. c. 21. f. 16.

And no such liquor, exceeding one gallon, shall be carried without such certificate or permit; on pain of forfeiting the same with the casks and vessels. f. 17.

And if any person shall take out a permit, and not remove the liquors accordingly, nor return the permit; he shall forfeit treble value: And if there appears not a sufficient decrease in the stock, to answer the quantity in the permit, the officer may seize so much as will answer the quantity. But no person shall receive a permit, without direction in writing of the person (or his servant) from whose stock the goods are to be removed; on pain of 50l. and in default of payment, three months imprisonment. 11 G. c. 30. f. 10.

Selling without
a permit, or ped-
lars with one.

57. If any person shall offer any spirituuous liquors to sale, not having a permit; or if any pedlar or other trading person, going from town to town, or other mens houses, and trading either on foot, or with any horse or other cattle, or otherwise, shall offer any such liquors to sale, altho' he have a permit: the person to whom they are offered to sale, may seize and detain such liquors, and carry them to the next warehouse belonging to the customs or excise, and bring the person before a justice, to be by him committed to prison, and prosecuted for the penalties incurred for such offence; and such liquors may be prosecuted in the name of the person who stopped or seized the same, in like manner as if they had been seized by an officer. 9 G. 2. c. 35. f. 20.

Officer neglect-
ing to seize.

58. When any officer of the customs shall neglect to seize and prosecute any vessel, boat, horses, or other cattle or carriage, forfeited for running of brandy, and shall be convicted thereof on his appearance or default, by oath of one witness, or confession; he shall forfeit 50l. 6 G. 2. c. 17. f. 10.

Constable neg-
lecting his duty.

59. If any constable or other peace officer, shall refuse or neglect on notice, or his own view, to be aiding in the execution of this, or of the acts of 9 G. 2. or 10 G. 2. herein mentioned; he shall, on conviction by the oath of one witness, forfeit 20l. 11 G. 2. c. 26. f. 7.

Carrying coast-
wise.

60. All low wines or spirits carried coastwise, without a certificate from the officer of excise where they were made, that the duty hath been paid, shall be forfeited, and seized by the officers where they shall be brought in. 3 G. c. 4. f. 17.

61. By the former acts, it was generally provided, that ^{Shipped as stores,} some spirits might be exported, and a drawback of the duties was to be allowed thereupon.

But by the 6 G. 2. c. 17. for spirits drawn from *British* corn, there was to be allowed a drawback by the excise officers at the port of shipping, of 4 l 18 s a ton, in full of all drawbacks: Except that from every ton of spirits drawn from barley malt, or other corn, there shall be paid by the officers of the customs, when barley is 24 s a quarter, or under 1 l 10 s in like manner as for corn exported. s. 7, 8.

And by the 33 G. 2. c. 9. there was to be an additional drawback of 24 l 10 s a ton, on all *British* made spirits exported; oath being made before two commissioners of excise or justices of the peace, that the duties were paid, and that the same were to be exported for *merchandise* to be spent beyond the seas. s. 15.

And by the said act of the 33 G. 2. c. 9. it is further enacted, that the same drawbacks and allowances shall be made on spirits shipped as *stores*, to be spent on shipboard, on giving five days' notice thereof to the commissioners of excise or to whom they shall appoint, mentioning therein the destination of the voyage, the tonnage of the ship, and the number of mariners intended to be employed; which said commissioners, or person appointed by them, shall ascertain the quantity of such spirits which shall be shipped on board such vessel as *stores*, and the size and marks of the casks in which such spirits shall be shipped. And on oath being made before one commissioner or justice of the peace, or other person authorized by the commissioners, that the duties are paid, and that the same are to be shipped as *stores* to be spent in the voyage; and on certificate from the officer of excise where such spirits were shipped of the quantity so shipped; and that the same were proof spirits, and shipped in the presence of such officer, the duties shall be allowed or paid back. s. 15.

Provided, that no drawback shall be allowed for spirits shipped as *stores*, in any vessel of less than 100 tons burden. s. 16.

And if any such spirits shipped for *stores*, shall be re-landed in *Great Britain, Guernsey, Jersey, Alderney, Sark, or Man*, unless in case of distress to save the goods from perishing (of which notice shall immediately be given to the proper officer); then, not only all such spirits and the casks or other package shall be forfeited, but also the person who shall bring, or procure such spirits to be re-landed

or shall be assisting or otherwise concerned in unshipping the same, or to whose hands the same shall knowingly come after the unshipping, or by whose privity or direction the same shall be relanded, shall forfeit double the amount of the drawback, and also the casks and other package, together with the vessels and boats, and all the horses or other cattle and carriages whatsoever, made use of in landing, removing, or carrying the same; which may be seized by any officer of the customs or excise. Master assisting therein, or conniving thereat, shall (over and above all other penalties) be imprisoned for six months. And if the package shall be altered at any time after the shipping thereof, and before the arrival of the ship at the place of discharge; the master, or other person taking charge of the vessel, shall forfeit 100*l.* *f.* 18.

And whereas spirits shipped for stores are frequently concealed from the officers, on pretence of being put underneath other goods; all spirits shipped for stores, shall, during the time the vessel shall be in port, be openly stowed and kept, so that the officers may at any time examine the same; on pain of forfeiting double the duty of all such stores which shall not be so stowed and kept, or produced and shewn to the officers of excise, according to the rate such spirits would have been charged with if made for home consumption. 2 *G.* 3. *c.* 5. *f.* 21.

Exportation
duty free.

62. No wash which shall be brewed or made for the making of low wines in order to extract spirits for exportation, nor any such low wines or spirits, shall be chargeable with any duties of excise; and all drawbacks thereupon, whether payable by the commissioners of excise or customs shall cease. 2 *G.* 3. *c.* 5. *f.* 5, 6.

Entry of houses
and vessels for
making spirits
for exportation.

63. Every distiller intending to make or distill spirits for exportation, shall, four days at the least before he shall begin to brew any corn or grain, or to mix any other materials for the making of wash, to be distilled into low wines, in order to extract spirits for exportation, make a particular entry at the next office of excise, of every still, copper, ton, washbatch, cask, or other vessel, which he shall make use of for the brewing, distilling, working, making, laying, or keeping any worts, wash, low wines, or spirits; and also of the casks or vessels which he shall make use of for the brewing, holding, or keeping of the after-runnings or feints from the second extraction which shall from time to time be drawn from every such still; and also of every workhouse, still-house, storehouse, warehouse, or other place, by him

used for the preparing, distilling, or keeping wash, low wines, or spirits; and in such entry shall insert the day when he intends to begin first to brew any corn or grain, or to mix any other materials for the making of wash, to be distilled into low wines, in order to extract spirits for exportation; and shall afterwards, from time to time, during the continuance of such entry, give or leave notice in writing at the said office of excise, or with the officer for the division, four hours at least before he shall begin any such subsequent brewing or mixing, and shall insert in such notice the hour when he intends to begin; and shall also, from time to time, during the continuance of such entry, give or leave notice in writing at the said office of excise or with the said officer, four hours at least before any wash is pumped up or otherwise conveyed into the still, and shall insert in such notice the hour when he intends to begin; on pain of 100 l for every offence. And if after such entry so made, he shall not begin and proceed to brew or mix his materials as aforesaid, on the day mentioned in such entry or within four hours afterwards; or having given such notice, shall not begin and proceed in such operations at the hour and time mentioned in such notice, or in two hours afterwards; such notice shall be void: and if he shall proceed without fresh entry or notice respectively, he shall forfeit the like sum of 100 l. 2 G. 3. c. 5. s. 7.

Provided, that nothing herein shall extend to permit or authorize any distiller to make entry of his intention to make spirits for exportation, whose wash still will not contain 1600 gallons, and the spirit or low wine still 800 gallons. s. 8.

Neither shall any distiller be permitted to distill spirits for exportation, altho' he may have made entry as aforesaid, unless he shall actually have distilled into spirits all the wash and low wines in his custody for making of spirits for home consumption, at least 48 hours before the day mentioned in such entry. *id.*

Provided, that when any distiller shall be desirous of distilling any spirits for home consumption, and shall have actually distilled into spirits all the wash, low wines, and feints in his possession for the making of spirits for exportation, and such spirits shall be locked up in the warehouse as herein after is directed; he may withdraw his entry for exportation, and be at liberty to make a fresh and like entry for making spirits for home consumption; and after six days from such entry made, he may

Manner of making and warehousing for exportation.

begin to brew or mix materials for wash to be distilled into spirits for home consumption : And if he shall begin contrary hereunto, he shall forfeit 200l. *f. 9.*

64. And no wash that shall be brewed or mixed for the extracting of spirits for exportation, shall be pumped up into the still, or otherwise removed from the back or vessel wherein the same was fermented, but in the presence of an officer ; and such distiller shall run or draw off his low wines immediately from the still into entred vessels only, and continue them therein, so that the officers may take a true gage of such low wines ; and such distiller shall provide a proper cask which shall be duly entred and gaged, into which the spirits shall immediately run from the still, which cask shall be sufficient to contain the whole produce of spirits to be extracted from each still when made up to the proper strength such spirits are required to be ; and when the whole quantity of spirits shall be collected in such cask from each still, such distiller shall immediately make up such spirits in the presence of the officer, to the strength of one to six under hydrometer proof : And a true gage of such spirits so made up shall then be taken by the officer. And the said spirits shall immediately afterwards be put into casks, and secured in the presence of the officer in a warehouse to be provided and kept by the distiller, and duly entred at the proper office of excise ; which spirits shall be kept there separate from all spirits made for home consumption ; and no spirits for home consumption shall be put into the same warehouse ; and such warehouse shall be secured under three locks, one to be provided by the distiller, and the other two by the officer of excise at the expence of the distiller ; whereof one key to be kept by the distiller, another by the supervisor, and the third by the officer of excise, until the spirits shall be delivered out for rectification, or afterwards for exportation ; which warehouse shall be secured to the satisfaction of the supervisor signified under his hand : and if any distiller for exportation shall act contrary to these directions ; or shall obstruct the officer in gaging, or in taking samples, or in trying the proof of the spirits (which gages, samples, and trials of proof the officers shall make as often as the commissioners shall direct, the samples to be returned when the commissioners shall find it expedient to give directions for that purpose) ; or shall open any of the locks in the absence of the officer, or make an way into such warehouse, or remove any part of the partition of it, or make any ad-

diti-

dition to, or any way alter the same, without notice to the supervisor and his consent in writing first had; or shall remove any of the said spirits from the warehouse, before the same shall be taken out for immediate rectification or exportation; or shall remove or conceal any wash or low wines for making spirits for exportation, or any such spirits, whether raw, or rectified, either before the same are put into the warehouse or afterwards; he shall forfeit 500 l. 2 G. 3. c. 5. s. 10.

But this shall not hinder any maker of spirits for exportation, from sending such spirits out of his locked warehouse to any other distiller: provided such maker and distiller give bond in double value of the spirits, and double duty which they would have been liable to if made for home consumption, for the due exportation thereof within three months; and provided leave in writing be obtained from the commissioners; and four hours notice thereof at least be given to the officer, that he may receive the same into such distiller's stock; and provided such spirits be removed with a proper certificate from an excise officer: And such distiller shall thereafter be liable to the same penalties for breach of directions, as the maker would have been. s. 11.

And to prevent distillers from working in the absence of the officers; every such distiller shall permit the officer to secure the heads of the stills, when the stills are not at work; and also the pumps for charging the stills and emptying the low wine and spirit cask, so as to prevent the same from being used in the absence of the officer; and also to secure the lid or head of the low wine and spirit casks, and the safe at the end of the worm, to prevent any spirits or low wines from being secreted, whilst the still is at work. s. 18.

65. No raw unrectified spirits shall be permitted to be exported. And when any distiller for exportation shall be desirous to take any of his spirits out of the warehouse in order to be rectified, or when rectified, and again deposited in the warehouse, in order to be immediately shipped for exportation, he shall thereof give four hours notice in writing to the supervisor or officer of excise, and shall insert in such notice the day and hour when he intends so to do, and also the quantity and quality of spirits he desires to take out, and whether such spirits are raw or rectified, and out of what warehouse, and whether the same are for rectification and by whom, or for immediate exportation, or to be sent coastways, and to whom

Taking out of the warehouse for rectifying, or exportation.

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and to what port, and whether for merchandize or stores: And the supervisor or officer shall attend and see the quantity taken out, and take an account of the same. And if such distiller shall not begin and proceed to take the spirits out of the warehouse at the time mentioned in the notice, or within two hours after, such notice shall be void; and he shall give a fresh notice four hours at least before he shall begin to take the said spirits out of the warehouse. And if he shall make default in any of the said particulars, he shall forfeit 100 l. 2 G. 3. c. 5. *f. 11.*

And when any raw spirits shall be so taken out in pursuance of such notice, the same shall be immediately pumped up, or put in the presence of the officer into the still or stills, and be rectified forthwith, and the spirits shall be run off immediately from the still into a like cask as is before directed to be provided and entred for the containing of spirits immediately distilled from low wines; and when the whole quantity of spirits designed to be made into brandy shall be collected into such cask from each still, the same shall be immediately made up in the presence of the officer to the strength of one to six under hydrometer proof, at which strength all spirits are to be exported; and a gage of such spirits so made up shall then be taken by the officer, who shall keep an account thereof; and such spirits shall immediately afterwards be put into casks, and in the presence of the officer either carried directly on shipboard for exportation (if intended to be immediately exported), or else into such warehouse to be locked up in manner aforesaid. 2 G. 3. c. 5. *f. 13.*

And if it shall happen, that the spirits distilled for exportation in one day belonging to any distiller, cannot for want of time be conveyed from the spirit cask (into which they are directed to be run immediately from the still) and locked up in the warehouse; the officer shall gage the same, and secure the lid of the said spirit cask, and take samples thereof: which spirits shall be locked up in the warehouse the next morning (if not intended for immediate exportation). And if it shall appear, that any decrease has been made in the quantity or quality of the said spirits so gaged; or if any such spirits shall have been removed in the absence of the officer; the distiller shall be charged for the said spirits so decreased or removed, double the duties which they would have been charged with if made for home consumption. *f. 14.*

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66. Provided, that if any such distiller, after he shall have deposited in such warehouse any spirits, whether raw or rectified, made (from corn, malt, or melasses, and not otherwise, 6 G. 3. c. 46. s. 1.) for exportation, shall be desirous of using any such spirits for home consumption, and shall signify such his desire to the commissioners; they, or two of them, may direct the quantity so desired, to be taken out and delivered to the distiller; he having first paid to the officer appointed to receive the duties on low wines and spirits, the sum of 40 l 10 s for each ton of such spirits of the strength they were taken into such warehouse, to wit, one to six under hydrometer proof. 2 G. 3. c. 5. s. 15.

And for the purposes of this act, each gallon of brandy, or spirits of the strength of one to six under hydrometer proof, shall be reckoned at 7 lb. 3 oz. the gallon. s. 16.

Provided always, that no less quantity than a ton of such spirits shall be taken out of any such warehouse, at one time for home consumption. 6 G. 3. c. 46. s. 2.

67. When any quantity of raw spirits shall, in pursuance of any notice, be delivered out of the warehouse, in order to rectify the same; as many gallons of rectified spirits, and of the same strength when made up, shall be produced, as such quantity amounted to when taken out of the warehouse, allowing only for the feints. And the commissioners shall make just allowances for necessary waste, and the difference that will arise between gaging and weighing spirits. Which feints shall also be run off from the still directly into one large feint cask, and shall be immediately gaged as soon as the still is off, and an account thereof taken by the officer, and kept in stock by him; who may take samples of such feints. Which feints shall be in like manner locked up in the warehouse, and shall be there put into one or more large casks to be provided by the distiller, and marked with the word *Feints*. And every such distiller shall, once a month at least, distill all his feints, and make up the spirits to be produced therefrom of the strength of one to six under hydrometer proof. And all such spirits shall then be locked up, or exported as other spirits for exportation are hereby directed to be. 2 G. 3. c. 5. s. 17.

68. If any decrease shall be found in the *wash* brewed or made for the distilling of spirits for exportation (except such decrease as shall be made appear to the commissioners to have really and truly risen from accidents); the officer shall

Taking out for home consumption.

To be returned to the warehouse after rectifying.

Penalty for spirits missing.

shall charge double duty for the same, calculating such waste so found to be decreased, to produce the same quantity of low wines and spirits as waste is presumed to do when spirits are made for home consumption: And if any decrease shall appear in the stock of *spirits* made for exportation, except such as may be accounted for by certificate of the officer either as being exported for merchandize or for stores, or as being taken out for home consumption on payment of duties by consent of the commissioners, or by any allowance the commissioners shall have made for waste or for any difference which may have arisen between gage and weight, or by being sent coastwise for exportation, or by being sent with the consent of the commissioners to any other distiller in order to be rectified for exportation; the officer shall charge for all the spirits so decreased, double the duty such spirits would have been charged with if made for home consumption. 2 G. 3. c. 5. s. 18.

Delivered out for carrying coastwise for exportation.

69. When spirits made for exportation shall be delivered out of the warehouse, to be sent *coastwise* (with a certificate from the proper officer) in order for exportation; the distiller shall, on taking out the same, give bond in double the value of the spirits, and double the duties which are payable for the like spirits distilled for home consumption, that the same shall (the danger of the seas and enemies excepted) be really and truly landed in such port of this kingdom for which the same shall be entred. And such bonds shall not be discharged or delivered up, till a certificate shall be produced from the chief officer of excise of the port for which such spirits were entred, testifying the landing thereof, and describing the number of the casks or other package, and the marks, and the quantity of spirits landed; and also testifying, that the master, mate, purser or other person having charge of the vessel, had made oath before him, that the said spirits were fairly landed there, and that at the time of landing they were of the same quality as when shipped on board, and that no part of such spirits had been wilfully or fraudulently diminished, relanded, or unshipped since the same were put on board; and also, testifying, that the same were really, and truly, since their arrival there, exported from thence to foreign parts; and the condition of all such coast bonds shall be, to produce such certificate in six months from the date thereof. And such spirits so to be sent coastwise, when landed at the port for which they were entred, shall be immediately put into

into a proper warehouse, and there continued until the same shall be exported, and shall be secured by the person to whom they are sent, and by the said chief officer, by two locks and keys to be provided by the person to whom the spirits were sent, one key to be kept by the said person, and the other by the officer. And all masters, commanders, and other persons belonging to any vessel carrying goods coastwise, who shall assist or connive at the fraudulent landing, embezzling, or diminishing any spirits sent coastwise, and all other persons concerned in unshipping the same, or to whose hands the same shall knowingly come, shall be subject to all penalties and forfeitures inflicted by any former act for enforcing the fair exportation of spirits to foreign parts. 2 G. 3. c. 5. s. 19.

70. When any spirits made for exportation shall be entred for *Ireland*, or his majesty's plantations in *America*, or any other parts beyond the seas in *Europe*, or any parts in *Africa* or *Asia*; the exporter thereof, when the whole quantity of spirits intended at that time to be exported shall be shipped, shall immediately give bond in double value of the spirits entred for exportation, and double the duties such spirits ought to have paid if they had been made for home consumption, that the same shall (the danger of the seas and enemies excepted) be landed at the place of destination, and until such bond shall be entred into by the exporter, the distiller from whose warehouse such spirits were sent shall be charged for such quantity of spirits so shipped for exportation, with double the duty such spirits would have been charged with if made for home consumption, and such charge shall not be discharged till such bond shall be given; and such bond shall not be discharged, till a certificate be produced from the proper officer abroad, of the due landing thereof, and of oath being made before him by the master or other person having charge of the vessel that the same had not been fraudulently diminished, relanded, or unshipped; and until oath shall also be made by the exporter at home, that to the best of his knowledge or belief, the same were disposed of at the place referred to in the certificate: and the condition of the bond shall be, to produce such certificate from *Ireland* in 6 months, from *America* in 18 months, from other parts of *Europe* in 15 months, from *Africa* in 18 months, and from *Asia* in 3 years, (danger of the seas and enemies excepted). 2 G. 3. c. 5. s. 21, 22.

Bond to be given on exportation.

71. For

Bounty on ex-
portation.

71. For the encouragement of the exportation of spirits made from *corn*; there shall be a bounty of 3*l* 12*s* for every ton of spirits made from corn, which shall be exported as merchandize. And on oath made before two commissioners of excise, or justices of the peace for the place from which such spirits are intended to be exported, that the same were drawn and made in *Great Britain* from corn under the regulations of this act, and not mixed with any other materials except what were necessary for rectifying the same, and that since the making thereof the same have been properly secured in a warehouse according to the directions of this act, and that the same are to be exported for merchandize to be spent beyond the seas; and on producing a certificate under the hand of the officer of excise for the port or place where such spirits were shipped, of the quantities so shipped, and that the same were shipped in the presence of such officer; the distiller shall be paid by the commissioners of excise, or their collector for the port or place where such spirits shall be shipped, the said bounty of 3*l* 12*s* a ton, and so in proportion for a greater or less quantity. 2 G. 3. c. 5. s. 20.

Provided, that no drawback shall be allowed, for any *British* made spirits, exported as merchandize, in any cask containing less than 100 gallons, or in any vessel of less burden than 100 tons. 33 G. 2. c. 9. s. 16.

----- Except to *Africa* and *Newfoundland*; unto which places they may be exported as merchandize, in any vessel not being of less burden than 70 tons. 6 G. 3. c. 46. s. 9.

Exportation of
rum.

72. On the exportation of rum or spirits of the produce of the *British* plantations in *America*, as merchandize, in lieu of all former drawbacks, all the duties of custom shall be drawn back: and rum exported from the rum warehouse, before payment of the excise duties, shall be discharged of the said duties of excise. 33 G. 2. c. 28. s. 1, 2.

And on oath made before two commissioners or justices, that the rum is to be exported for merchandize to be spent beyond the seas; and on producing a certificate from the excise officer of the quantity shipped, and that a certificate was produced from the proper officer of delivery from the warehouse on bond being given for the due exportation thereof, and also upon delivery of such last mentioned certificate, the person having custody of the bond for payment of the duties shall deliver it up; or if only a
part

part of the rum contained in the bond shall be certified to be shipped off, then such quantity shall be indorsed upon the bond. 33 G. 2. c. 28. f. 1, 2. 8 G. 3. c. 25.

f. 7. Provided, that the said drawback shall not be allowed for any rum exported in any cask containing less than 100 gallons, or shipped on board any vessel of less burden than 100 tons (except to *Africa, Ireland, and Newfoundland*; unto which places they may be exported as merchandize, in any vessel not being of less burden than 70 tons, 6 G. 3. c. 46. f. 9.) ; or exported from any port not being the port of its importation. 33 G. 2. c. 28. f. 6.

And if after delivery from the said warehouse any rum shall be concealed ; or not shipped within 12 hours ; or the casks or package be opened, or any part taken out, or the quality be altered ; all such rum shall be forfeited with the casks and package, and may be seized by any officer of excise ; and the bond for exportation shall be put in suit, unless the commissioners see cause to forbear the same. f. 8.

73. All the penalties not herein otherwise directed, shall be sued for and mitigated as by the laws of excise, or in the courts at *Westminster* ; and be half to the king, and half to the informer or prosecutor. 24 G. 2. c. 40.

f. 33.

74. And where the retailer is sent to the house of correction, the commissioners shall cause rewards, not exceeding 5 l., to be paid to the informers. 17 G. 2. c. 17. f. 21.

75. No informations shall be brought against a distiller, for any false or misentry, or offence, but within three months after the offence committed ; and notice thereof shall be given to the party in writing, or left at his dwelling house, within a week after laying the information. Limitation of actions.

12 & 13 W. c. 11. f. 17.

76. And the commissioners shall cause all foreign exciseable liquors, seized for non-payment of duty, or for being prohibited to be imported, to be publicly sold, after condemnation, to the best bidder, at such places as they shall think proper. 12 G. c. 28. f. 1. Sale after condemnation.

77. And all stills, worms, and still heads, and other vessels and utensils for distilling, by whomsoever they shall be claimed, shall be liable to arrears, 7 & 8 W. c. 30. Utensils liable.

f. 13.

78. The justices within the limits of the head office of excise in *London*, shall once in every month transmit to the clerk of the peace, a certificate of all persons convicted of Conviction to be kept amongst the records of the sessions. before

before them for any offences against this or any former act relating to spirituous liquors, or for licensing the retailers thereof; who shall keep and enter the same among the records of the court: which certificate shall be evidence upon any information relating to spirituous liquors. 24 G. 2. c. 40. s. 21.

XV. *Starch and hair powder.*

Duty on starch imported.

1. By the 10 *An. c. 26.* and 12 *An. s. 2. c. 9.* For all starch imported shall be paid 4 d a pound, over and above all other duties.

And all hair powder made of starch, or other powder that will serve for the same uses as starch, shall on importation pay the same duties, as foreign starch imported. 3 G. c. 4. s. 14.

Duty on home starch.

2. And by the said acts, for all starch made in the kingdom, a duty shall be paid of 3 d a pound.

Officers for these duties.

3. For the management of which duties on home starch the commissioners of the treasury shall appoint commissioners, who shall substitute inferior officers. 10 *An. c. 26. s. 9.*

Places of making to be entered.

4. And no maker of starch shall set up or use any workhouse, storehouse, room, or other place, for making, drying, or keeping of starch, or for the converting or keeping any flour, meal, or other materials proper to be made into starch, or use any fat, trough, box, stove, utensil or other vessel for making of starch; without notice thereof being first given in writing at the next office for the said duties; on pain of 50 l. 10 *An. c. 26. s. 10.*

And a summons left at the place where discovery shall be made of such offence, directed to the person prosecuted, by his right or assumed name; shall be as effectual as if delivered personally, and directed to him by his proper name. 5 G. 3. c. 43. s. 19.

And all flour, meal, and other materials, found in any private workhouse, or other place, and all private utensils, and vessels for making or keeping starch, for which no entry shall be made, or notice given, shall be forfeited, or the value thereof. 10 *An. c. 26. s. 22.*

Officers to enter and survey.

5. And the officer shall at all times by day or night, and if in the night in presence of a constable, be permitted on request to enter the house, workhouse, warehouse, or other place used by any maker of starch; and by gaging or weighing the starch, and gaging the boxes and other utensils,

utensils, or otherwise, to take an account of the quantity; and thereof shall make return in writing to the commissioners, leaving a true copy, if demanded, under his hand, with the maker; and if he shall not leave such copy (after demand in writing, 12 G. c. 28. f. 30.) he shall forfeit 40 s. 10 An. c. 26. f. 14.

6. And if the maker shall obstruct such officer in the execution of his duty, he shall forfeit 20 l. 10 An. c. 26. f. 18. Obstruſting the officer.

7. The maker shall use regular, square, or oblong boxes only, for boxing and draining his green starch, before it is dried in the stove, on pain of 10 l. 4 G. 2. c. 14. f. 1. How to be boxed in making.

8. And he shall, if within the bills, give 12 hours, elsewhere 24 hours notice in writing to the officer, of his intention to put any green starch into such boxes; on pain of 20 l. And he shall, within two hours after such notice shall have been given, begin to box it, and so continue, that the officer may have a gage of the whole; on pain of 20 l. 4 G. 2. c. 14. f. 1. Notice of boxing.

9. And if the charge be made by gaging it before it be dried in the stove; then every box of green starch, or starch before it be dried, containing 57 inches in length, and 10 inches in breadth, and eight inches in depth, or in the whole 4560 solid inches, shall be esteemed 131 pounds averdupois, of starch dried and perfectly made. 1 G. f. 1. c. 2. f. 6. Gaging in the boxes.

10. And the maker shall keep just scales and weights at the place where he makes his starch, and permit and assist the officer to make use thereof; on pain of 10 l. 10 An. c. 26. f. 16. Scales and weights.

And by the 10 G. 3. c. 44. if he shall use insufficient scales or weights, he shall forfeit 100 l: but not to be prosecuted both on this and the former act.

11. No maker of starch shall (on pain of 20 l) remove any starch of which no account hath been taken by the officer, from the place where it was made; without giving to the officer within the bills 24 hours notice, and elsewhere two days notice. 10 An. c. 26. f. 19. Removing before surveyed.

And by 4 G. 2. c. 14. if he shall remove any starch after it is dried, out of the stove or drying place, before it has been weighed and taken account of by the officers; he shall forfeit 50 l. f. 2.

12. If any officer of the duties upon starch or of the customs, shall have any cause to suspect that starch is privately making in any place, or concealed; then upon oath made before any commissioner or justice residing near, setting

ting forth the ground of his suspicion, such commissioner or justice may issue his warrant, to authorize such officer by day or night (but if in the night, in presence of a constable) to enter such suspected place, and seize and carry away the same, with the materials, as forfeited, together with the boxes and other things containing it : and unless the party make it appear that the duty has been paid, he shall forfeit 50 l; and if any person obstruct the officer, he shall forfeit 100 l. 4 G. 2. c. 14. s. 4. 23 G. 2. c. 21. s. 34.

Officer to charge
for materials
missing.

13. The officer shall be permitted to take an account of the quantities of flour, meal, and other materials proper to be made into starch, that shall be in the possession of the maker; and if he shall miss any such materials, which he had taken an account of the last time he was there, and shall not on reasonable demand, receive satisfaction what is become thereof, he may charge the maker with such quantity of starch, as such materials so missing in his judgment would reasonably have made, not exceeding 25 pounds weight of starch, for every bushel of such ingredients mixed or unmixed. 10 An. c. 26. s. 17.

Starch unsurveyed
to be kept
separate.

14. The maker shall keep all starch by him made and not surveyed, separate from other starch which hath been surveyed, for 24 hours after making within the bills, and for two days elsewhere, unless it shall be sooner surveyed; on pain of 5 l. 10 An. c. 26. s. 20.

Entry of starch
made.

15. The maker within the bills shall monthly, and elsewhere every six weeks, make entry in writing at the next office, of all the starch by him made, setting forth the weight, and how much was made at each time; on pain of 50 l. Which entry shall be on oath of the maker, or his chief workman, according to the best of his knowledge and belief, before such officer as shall be appointed by the commissioners within the bills, and elsewhere before the collector and supervisor. 10 An. c. 26. s. 11.

But he shall not be obliged to go further to make entry, than to the next market town. s. 12.

Payment of the
duties.

16. The maker within the bills, shall within four weeks, and elsewhere within six weeks after entry, clear off the duties; on pain of double duty: And no maker, after default in payment, shall sell or deliver out any starch until he hath cleared off the duty; on pain of double value. 10 An. c. 26. s. 13.

Carrying it
coastwise.

17. Cocquets granted for shipping starch, to be landed in any other part of the kingdom, shall express the quality, quantity, and weight, the mark of the package, and by

by whom made and sold, and where consigned; and if shipped without such cocquet, it shall be forfeited and seized, together with the package. 23 G. 2. c. 21. f. 29.

18. No starch shall be *imported* otherwise than in some package, containing at least 224 pounds of neat starch, and stowed openly in the hold; on pain of being seized and forfeited, together with the package, and the master of the vessel to forfeit 50*l.* 23 G. 2. c. 21. f. 27.

But on information brought against such master, he may detain the wages of the mariners, till it be determined; and if it shall appear, that the starch was put on board by any mariner without the master's knowledge, the master may apply the wages of such mariner in payment of the forfeiture. 26 G. 2. c. 32. f. 8.

And the officers of excise (in like manner as the officers of the customs) may go on board any vessel, and search for and seize all starch forfeited, together with the package; and they may likewise seize such as before entry and payment of duties, shall be found unshipping or unshipped. 23 G. 2. c. 21. f. 28.

Starch that hath paid the duties may be *exported*; and the duties shall be drawn back. 10 An. c. 26. f. 25, 26, 27.

But no drawback shall be allowed on the exportation of any foreign starch imported. 23 G. 2. c. 21. f. 36.

And the officers of excise or customs may seize any starch or hair powder, with the horses and package, where they have good reason to suspect that it hath been privately made, or imported without payment of duty, or re-landed after drawback; and shall in ten days exhibit an information before three commissioners of excise, or two justices near where the seizure is made; and if the party doth not make it appear that the duty hath been paid, it shall be forfeited, together with the horses and package; and the offender shall likewise forfeit 5*l.* for every hundred weight. 4 G. 2. c. 14. f. 3.

And by the 23 G. 2. c. 21. it is enacted, that the said officers may seize any starch, with the package, that shall be found in any vessel, cart, or other carriage, where they shall have good reason to believe that the same was made in some private workhouse, or clandestinely imported, or re-landed after drawback; and if the party, at the hearing of the information, shall not make it appear that the duty hath been paid or secured, he shall forfeit 5*l.* for every 100 pounds weight, and also the goods and package shall be forfeited. f. 30.

And

And if any foreign starch shall be unshipped, with intention to be laid on land before entry and payment of the duties, or shall be landed again after shipping for exportation on debenture; the same, together with the package, vessels, boats, horses, and other carriages, used in landing or conveying the same, shall be forfeited, and may be seized by any officers of the customs or excise; and the persons from whom the same shall be seized, shall forfeit 5*l* for every hundred weight. 23 G. 2. c. 21. s. 31.

And if any person shall knowingly harbour or conceal any starch unlawfully imported, or relanded after shipping for exportation upon debenture; he shall, whether he claims any property therein or not, forfeit 50*l* for every hundred weight, together with the goods and package. 23 G. 2. c. 21. s. 32.

And where any such starch shall be seized as forfeited, and no person shall claim the same in 20 days, if it is within the limits of the chief office of excise in *London*, the officer who made the seizure may cause notice signed by the solicitor of excise, to be affixed at the *Royal Exchange*, of the the time of proceeding to trial and condemnation of the same by the commissioners of excise; and if it is out of the said limits, then publick notice shall be given by proclamation, at the next market town, on the market day, next after the said 20 days, of the day and place where the justices will proceed to trial and condemnation thereof: And the judgment thereon shall not be liable to appeal, nor be removed by certiorari. 23 G. 2. c. 21. s. 33.

Making of hair powder.

19. No perfumer, peruke maker, barber, or dealer in hair powder, shall make, use, or offer to sale, any powder made of or mixed with alabaster, talke, plaister of paris, whiting, lime, or other thing of the like nature (sweet scents only excepted); on pain of forfeiting the same, and 50*l*. 12 *Ann. st.* 2. c. 9. s. 20.

And by the 4 G. 2. c. 14. If any maker of hair powder, or other such person, shall mix any powder of alabaster, plaister of paris, talke, chalk, whiting, lime, or any other material (rice first made into starch, and sweet scents only excepted) with any starch or powder of starch to be made use of for making of hair powder, and shall make any hair powder with any the said materials, or any other material except starch or powder of starch, or of rice first made into starch, and shall use, sell, or offer to sell any hair powder so mixed or made; he shall forfeit the same, and 20*l*. s. 5.

20. Every

20. Every maker of hair powder shall make entry in writing at the next excise office of his place of abode, and of his workhouse or other place made use of for making hair powder; on pain of 20 l. 4 G. 2. c. 14.

Places of making hair powder to be entered.

21. And the officer, in the day time, on his request, may enter places used for making hair powder, and the shops of perfumers, peruke makers, barbers, and other sellers or dealers in hair powder, and examine the same, and carry away samples, paying a reasonable price for the same: 4 G. 2. c. 14. f. 7.

Officer to enter the time and survey.

And if such starch maker or dealer shall not on request suffer him to enter, and examine, and take samples (on offering to pay the common price); he shall forfeit 20 l. f. 9.

22. And if any starch maker, or dealer in hair powder, shall have in his possession, for making, mixing, or counterfeiting, hair powder, any alabaster, plaister of paris, talke, chalk, whitening, lime, or other material, besides starch, or powder of starch, or of rice first made into starch; he shall forfeit the same, and 10 l. 4 G. 2. c. 14. f. 8.

Person having in his possession materials for adulterating hair powder.

23. All the said forfeitures shall be sued for, levied and mitigated, as by the laws of excise, or in the courts at Westminster; and be distributed half to the king, and half (and on the 10 An. c. 26. half with full costs) to the prosecutor. 10 An. c. 26. f. 29. 24 G. 2. c. 40. f. 33.

Power of the justices.

24. And where any starch shall be seized for non-payment of duties, or non-entry, and it shall be disputed whether such payment or entry were made or not; the proof shall lie on the claimer, and not on the officer. 23 G. 2. c. 21. f. 34.

Proof to lie on the claimer.

25. And if the party is not satisfied with any judgment of the justices, on the act of 23 G. 2. c. 21. above-mentioned, he may appeal to the next quarter sessions (except in the case before mentioned, where no person shall claim the goods seized.) f. 36.

Appeal.

26. And the mitigation on the said act of 23 G. 2. shall not reduce the penalty to less than a fourth part, over and above the charges. f. 37.

Mitigation.

27. And all starch, materials, and utensils, in custody of the maker, or of any person to his use, shall be liable to all arrears of the duty, and penalties; and such proceedings may be had thereupon, as if the debtor or offender were the lawful owner. 10 An. c. 26. f. 23.

Utensils liable.

XVI. Wire.

Importing of
wire.

1. No foreign imbroldery, or gold or silver brocade, thread, lace, fringe, or work made thereof, or of copper, brass, or other inferior metal, or gold or silver wire, or plate shall be imported. 15 G. 2. c. 20. f. 7. 22 G. 2. c. 36. f. 1.

Duty on home
wire.

2. For all gilt wire made in *Great Britain* shall be paid a duty of 8d an ounce; for silver wire 6d an ounce, troy weight. 10 An. c. 26. f. 46.

Officers for these
duties.

3. And the commissioners of the treasury shall appoint commissioners for these duties, who shall substitute inferior officers. 10 An. c. 26. f. 48.

Places of making
to be entered.

4. And every person who shall draw any gold or silver into such wire as is commonly called big wire, shall first give notice in writing at the next office for the said duties, of his name and place of abode, and where he intends to work; on pain of 20l: and no refiner, wire-drawer, or other person, shall draw any gold or silver into such big wire, at any place other than some common bar house to be approved by the commissioners; on pain of 20l. 10 An. c. 26. f. 49.

And all gilt and silver wire, and bars for making it, which shall be found in any private workhouse, and all private utensils for barring or drawing it, of which notice hath not been given, shall be forfeited and seized, or the value thereof recovered. 10 An. c. 26. f. 59.

Officer to enter
and survey.

5. And the officer shall at all times, by day or night, and if in the night in presence of a constable be permitted on his request to enter the barhouse, workhouse, or other place used for making of such wire, and take an account of the weight, and thereof make return in writing to the commissioners, or to whom they shall appoint, leaving a copy thereof, if demanded, with the maker; and if he shall refuse to leave such copy (after demand in writing, 12 G. 2. c. 28. f. 30.) he shall forfeit 40s. 10 An. c. 26. f. 52.

Obstructing the
officer.

6. And if any such maker shall obstruct the officer, in the execution of his office, he shall forfeit 20l. 10 An. c. 26. f. 55.

Scales and
weights.

7. And the maker shall keep just weights and scales at the place of making the wire, and permit and assist the officer to weigh; on pain of 10l. 10 An. c. 26. f. 54.

And

And by the 10 G. 3. c. 44. if he shall use false or insufficient scales or weights, he shall forfeit 100 l: but not be prosecuted both on this and the former act.

8. Every ingot or bar of silver, designed for gilt wire, shall be weighed in the presence of the excise officer, who attends the forge where they are made, before they be covered with gold; and shall be weighed in presence of, and marked by the said officer, after the gold is laid on: and on refusal to admit the officer, the refiner or maker shall forfeit 20 l, half to the king, and half to him that shall sue. 15 G. 2. c. 20. f. 8, 9.

Ingots to be weighed.

9. If the officer's charge be made, by taking the weight of the gold and silver in big wire at the bar house, an allowance of one fifth part shall be made, in consideration of the waste, in reducing the same to small wire. 10 An. c. 26. f. 53.

Allowance for waste.

10. No wire drawer shall (on pain of 40 l) remove any gilt or silver wire, of which no account hath been taken, from the bar house or place of making, without giving to the officer 24 hours notice. 10 An. c. 26. f. 56.

Removing before surveyed.

11. Wire not surveyed shall be kept separate from that which hath been surveyed, for 24 hours after making, unless it shall be sooner surveyed; on pain of 10 l. 10 An. c. 26. f. 57.

Wire unsurveyed to be kept separate.

12. If the maker, or he for whom it is made, shall conceal any wire, or bars of silver prepared for making it; he shall forfeit 20 l. 10 An. c. 26. f. 58.

Concealing.

13. The maker shall once in every month make entry in writing at the next office, of all the wire by him made, setting forth the weight, and kinds, and how much was made in each week; on pain of 100 l. Which entry shall be made on the oath of the maker, or his chief workman, to the best of his knowledge and belief, to be administered by the officer. 10 An. c. 26. f. 50.

Entry of wire made.

14. And the duty shall be cleared off in six weeks after entry, on pain of double duty. 10 An. c. 26. f. 51.

Payment of the duty.

15. If any person shall export any gold or silver thread, or lace or fringe made of plate wire, spun upon silk, he shall have a drawback after the rate of 5 s a pound averdupois, of such silver thread, lace, or fringe, and of 6 s 8 d a pound of such gold thread, lace, or fringe. 10 An. c. 26. f. 62.

Exportation.

16. All the powers of the excise laws shall be in force for managing these duties: and the penalties and forfeitures (not herein otherwise directed) shall be sued for,

Power of the justices.

levied, and mitigated, as by the laws of excise, or in the courts at *Westminster*; and be employed, half to the use of the king, and half to him that shall inform or sue. 10 *An. c. 26. s. 64.* 24 *G. 2. c. 40. s. 33.*

Utensils liable.

17. And all such wire, materials, and utensils, in custody of any maker, or other to his use, shall be liable to the duties and penalties; and such proceedings may be had thereupon, as if such debtor or offender were the lawful owner. 10 *An. c. 26. s. 60.*

For regulations concerning the true making of gilt and silver wire (which do not belong to this place) see the act of 15 *G. 2. c. 20.*

And for prohibiting the selling or working up of foreign gold or silver lace or thread, see the 22 *G. 2. c. 36.*

Information against an alehousekeeper for arrears.

Westmorland. **B**E it remembred, that this ——— of ——— in the ——— year of the reign of his majesty king George the third that now is, at ——— in the said county, A. I. gentleman, in his proper person, as well for his said majesty, as for himself, exhibiteth to us A. P. and J. P. esquires, two of his said majesty's justices of the peace for the said county, residing near to the place where the forfeiture herein after mentioned was made, a complaint and information, and thereby informeth us, that at several times between the ——— day of ——— and the ——— day of ——— both now last past, at ——— aforesaid in the said county, one A. O. at a common alehouse then and there belonging to and used by him, did brew the several and respective quantities of beer and ale herein after mentioned; that is to say, 30 barrels of strong beer and of strong ale, each above the barrel; and sixty barrels of small beer not exceeding the barrel; and that the said A. O. at and during the respective time and times of brewing the said beer and ale, and of every part thereof, was and yet is a common alehousekeeper; and that there did thereby accrue and become due to his said majesty from the said A. O. for the said beer and ale so by him brewed as aforesaid, certain rates, duties, and sums of money, amounting in the whole to the sum of ——— of lawful money of Great Britain; which said rates, duties, and sums of money so accrued, or any part thereof, the said A. O. hath not paid.

er cleared off, to or for the use of his said majesty, within a month next after he, according to the statute in that behalf made, did make, or ought to have made his entry or entries of the said beer and ale so by him there brewed as aforesaid, or of any part thereof, or at any time since; but the same yet remain wholly due and unpaid, contrary to the form of the statute in such case made and provided; whereby the said A. O. hath forfeited double the value of the said rates, duties, and sums of money remaining unpaid as aforesaid; that is to say, — of like money; and thereupon the said A. I. who as well for his said majesty, as for himself exhibiteth this information, prays the judgment of us the said justices in the premises, and that he may have one moiety of the said forfeiture, according to the form of the statute in such case made; and that the said A. O. may be summoned to answer the premises before us the said justices.

Summons on the foregoing information.

To Mr. A. O. alehousekeeper.

Westmorland. **W**E J. P. and K. P. esquires, two of his majesty's justices of the peace for the said county of — do hereby give you notice that A. I. gentleman, hath exhibited before us an information against you for the sum of — being double the value of certain duties of excise of beer and ale by you brewed, the single duties whereof (as he alledgeth) you ought long since to have paid, but have neglected so to do: You are therefore hereby required to appear before us at the house of — at the sign of the — in — in the said county, on the — day of — now next ensuing, at the hour of — in the forenoon of the said day, then and there to answer to the said information. And if you shall neglect to do, we shall proceed as if you were personally present. And we do further authorize and require Mr. A. E. officer of excise, or any other officer of excise, to serve this our summons, and to attend us at the time and place last mentioned, then and there to make a return thereof to us the said justices. Given under our hands and seals at — in the said county, the — day of — in the — year of the reign of his said majesty king George the third.

Information against a maltster for concealing a quantity of malt.

Westmorland. **B**E it remembred, that this — day of — in the — year of the reign of his majesty king George the third, at — in the said county, A. I. gentleman, in his proper person, as well for his said majesty as for himself, exhibiteth to us J. P. and K. P. esquires, two of his said majesty's justices of the peace for the said county, residing near to the place where the offence herein after mentioned was committed, as is alledged, a complaint of information, and thereby informeth us, that A. O. of — in the said county, during three months now last past and longer, having been and continued to be, and yet being a maltster and maker of malt, and not having compounded for the duties of the malt herein after mentioned, be the said A. O. within three months now last past, at — in the said county did fraudulently hide, conceal, and convey away malt by him made, that is to say, 12 bushels of malt by him so made as aforesaid, from the sight and view of one A. E. being at the said time of the said hiding and concealing thereof, and long before, and ever since, the gager appointed to take an account of the same, and then and there endeavouring to take such account; which hiding, concealing, and conveying away as aforesaid, are contrary to the form of the statute in such case made and provided: Whereby he the said A. O. for every bushel of the said malt so hid and concealed, hath forfeited 10s of lawful money of Great Britain, amounting in the whole to 6l of like money. And thereupon the said A. I. who as well for his said majesty as for himself exhibiteth this information, prays the judgment of us the said justices in the premisses, and that he may have one moiety of the said forfeiture, according to the form of the statute in such case made; and that the said A. O. may be summoned to answer the said premisses, before us the said justices.

Summons on the foregoing information.

Westmorland. { To Mr. A. O. maltster.

WE J. P. and K. P. esquires, two of his majesty's justices of the peace for the county aforesaid, do hereby give you notice, that A. I. gentleman, hath exhibited before

an information against you for the penalty of 6l by you
 forfeited for hiding, concealing, and conveying away 12
 bushels of malt, from the sight and view of the gauger ap-
 pointed to take an account of the same, against the form of the
 statute in such case made: You are therefore hereby required
 to appear before us, at the house of — at the sign of —
 in the said county, on the — day of —
 now next ensuing, at the hour of — in the forenoon of
 the same day, then and there to answer to the said information.
 And if you neglect so to do, we shall proceed as if you were
 personally present. And we do further authorize and require
 Mr. A. E. officer of excise, or any other officer of excise, to
 serve this our summons, and to attend us at the time and
 place last mentioned, then and there to make a return thereof
 to us the said justices. Given under our hands and seals at
 — in the said county, this — day of — in
 the — year of the reign of his said majesty king George
 the third.

Summons to give evidence.

Westmorland. } To A. W. of — yeoman.

WHEREAS we whose hands and seals are hereunto
 set, being two of his majesty's justices of the peace in
 and for the said county, have received information, that A. O.
 of — in the said county, alehousekeeper, did on the —
 day of — now last past, brew and sell ale and beer, and
 hath not made entry thereof, according to the statute in that
 behalf made; and that you the said A. W. are a material
 witness to be examined concerning the same: These are there-
 fore to require you to appear before us at the house of —
 at the sign of the — in — in the said county, on the —
 day of — now next ensuing, at the hour of — in the
 forenoon of the same day, to testify your knowledge concerning
 the premises. Herein fail you not. Given under our hands
 and seals at — in the said county, the — day of —
 in the — year of the reign of his said majesty king
 George the third.

Judgment against the defendant.

AT the time and place appointed by our summons on
 the information within written; that is to say, this
 — day of — in the — year of the reign of our
 L 4 sovereign

sovereign lord king George the third, at ——— in the county of ——— within mentioned; the within named defendant A. O. appeareth, and pleadeth that he is not guilty of the offence within mentioned; but upon a due and full hearing of the proofs made in and concerning the premisses, we do convict him thereof: [Or ——— sufficient proof being made before us, that the within named defendant A. O. hath had due notice of the within written information, and that he was duly summoned to appear before us here this day; and he, in contempt of the said summons, neglecting now to appear and making default therein; and the fact and offence in the within written information being now fully proved before us, we do convict him thereof:] It is therefore now here considered and adjudged by us the said justices, that the said defendant hath forfeited the within mentioned sum of 50 l. (which we mitigate and lessen to the sum of 7 l.) to be distributed as the law directs. Given under our hands and seals, at ——— aforesaid, this ——— day of ——— in the ——— year of the reign of our said sovereign lord king George the third.

Warrant of distress.

Westmorland. { To A. E. and B. E. officers of excise,
and to either of them, and to such other
person and persons as they or either of
them shall take to his or their assistance.

WE whose hands and seals are hereunto set, two of his majesty's justices of the peace for the said county of ——— do in his said majesty's name, authorize and command you and every of you, that upon the brewing vessels and utensils for brewing used by A. O. of ——— in the said county, innkeeper, in the brewhouse and place where he usually brews, at ——— aforesaid, and upon the goods and chattels of the said A. O. you or any of you do levy the sum of 20 l. of lawful money of Great Britain, by us mitigated and lessened from the sum of 50 l. of like money recovered against him by A. I. gentleman, who prosecuted as well for our sovereign lord the king, as for himself, for a certain offence committed by the said A. O. against the laws and statutes of excise, whereof he the said A. O. is convicted before us; And for the levying thereof you are to seize, take and carry away the said brewing vessels and utensils for brewing, and also the goods and chattels aforesaid; and if in [eight] days next after such seizure, the said sum of 20 l. together with the reasonable charges of taking and keeping the said vessels

vessels and utensils, goods and chattels, shall not be paid, then, and in such case (after the expiration of the said——days) you are to make sale thereof or so much thereof as shall be sufficient for the purposes herein specified; which said sum of 20 l, when so levied as aforesaid, you are forthwith to pay to the collector of excise for the collection called——collection, for the time being; to be by him distributed and answered, according to the statute in such case made and provided: and after levying thereof, the overplus which shall remain of the said brewing vessels and utensils for brewing, and of the said goods and chattels, and of the money arising by such sale, you are to return unto the said A. O. upon demand, the reasonable charges of taking, keeping, and selling the said vessels and utensils, goods and chattels, being out of the said overplus money first deducted.

And all constables and other peace officers of the said county are hereby required to be aiding and assisting to you in the due execution hereof. But in case there cannot be found sufficient to raise the sum last mentioned, then and in such case, you are by a return to this our warrant, forthwith to certify the same, to us the said justices. Given under our hands and seals at——in the said county, this——day of——in the——year of his said majesty's reign, and in the year of our lord——

Return of the want of distress.

Westmorland. I A. E. one of the officers of his majesty's duties of excise, do hereby certify to J. P. and K. P. esquires, two of his said majesty's justices of the peace for the said county, that by virtue of a warrant from the said justices to levy the sum of 20 l upon the brewing vessels and utensils for brewing used by A. O. in his usual place of brewing, and upon his goods and chattels, I have made diligent search for such vessels, utensils, goods, and chattels; and that I can find none such; and that I do not know, nor can find, that the said A. O. hath any goods or chattels whatsoever. Witness my hand hereunto set, at——in the said county, this——day of——in the year of our lord——

Warrant of commitment.

Westmorland.

To A. E. and B. E. officers of excise, and to either of them, and to such person or persons as they or either of them shall take to their assistance: And to the gaoler or keeper of such prison to whom these presents shall come,

WHEREAS we whose hands and seals are hereunto set, two of his majesty's justices of the peace for the said county of—by our warrant under our hands and seals, bearing date the—day of—now instant, did require and command you the said A. E. and B. E. or either of you, to levy the sum of 20 l therein mentioned on the brewing vessels and utensils for brewing, used by A. O. of—in the said county, innkeeper, and upon the goods and chattels of the said A. O. And whereas you the said A. E. and B. E. by a return and certificate under your hands, bearing date the—day of—now instant, have certified to us, that having made diligent search for such brewing vessels and utensils for brewing, and for such goods and chattels, you cannot find any whereon to levy the said 20 l or any part thereof, and that no such vessels, utensils, goods or chattels can be found: We therefore the said justices do in his majesty's name hereby authorize, require and command you, every, or any of you, to take and arrest the body of him the said A. O. and forthwith to carry him to the gaol or prison of and for the county or place where you shall so take and arrest him; and him, together with a duplicate of this our warrant, there to deliver into the custody of the gaoler or keeper of the said gaol or prison of and for the said county or place, there to remain in safe custody until he shall satisfy and pay the said sum of 20 l of lawful money of Great Britain, by us mitigated and lessened from the sum of 50 l of like money, by us the said justices adjudged against him, upon an information exhibited against him before us by A. I. gentleman, as well on the behalf of his said majesty, as of himself, for a certain offence committed by the said A. O. against the laws and statutes of excise, whereof he stands convicted before us the said justices. And all constables, and other his majesty's officers, are hereby authorized and required, to be aiding and assisting to you in the due execution hereof. And the gaoler and gaolers, keeper and keepers of such prison or gaol to which you shall so carry the body of the said A. O. is and are hereby authorized and required, to receive

into

into his or their custody the body of the said A. O. and the same to keep in safe custody until he shall satisfy and pay the said sum of 20 l before mentioned. And for your, any, or either of your doing as is before respectively directed, this shall be to you, any, or either of you respectively, a sufficient warrant and authority. Given under our hands and seals at——in the said county, this ——day of——in the——year of the reign of his said majesty, and in the year of our lord——

More precedents it is not necessary to add, since the officers of excise are generally well furnished with printed forms drawn by good advice.

Note ; These statutes abovementioned, relating to this title are but temporary, and have their continuance as follows,

8 G. c. 18. Spirituous liquors. By the 14 G. 3. c. 86. to Sep. 29, 1781, and from thence to the end of the then next session of parliament.

5 G. 2. c. 24. Coffee. By the 14 G. 3. c. 86. to June 24, 1781, and from thence to the end of the then next session of parliament.

15 G. 2. c. 25. Rum. By the 11 G. 3. c. 51. to Sep. 29, 1778, &c.

19 G. 2. c. 34. Outlawed smugglers. By the 11 G. 3. c. 51. to Sep. 29, 1778, &c.

Execution.

1. **W**HERE a person attainted hath been at large after his attainder, and afterwards is brought into court and demanded why execution should not be awarded against him ; if he deny that he is the same person, it shall immediately be tried by a jury returned for that purpose. 2 *Haw.* 463.

2. The court may command execution to be done, without any writ. 2 *Haw.* 463.

3. In fixed and stated judgments, the law makes no distinction between a peer and a commoner, or between a common and ordinary case, and one attended with extraordinary circumstances ; for which reason it was adjudged in *Felton's* case, who murdered the duke of *Buckingham*, that

Execution.

that the court could not order his hand to be cut off, nor make it part of the sentence that his body should be hanged in chains, but that the body after execution being at the king's disposal, might be hanged in chains, or otherwise ordered as the king should think fit. 2 *Haw.* 443.

4. But the king may pardon part of the judgment; as where the judgment is hanging, beheading, imbowelling, and the like, the king may pardon all but the beheading, whereby the judgment is not altered, but part of it remitted. 2 *H. H.* 412.

5. It is clear, that if a man condemned to be hanged, come to life after he be hanged, he ought to be hanged again; for the judgment was not executed till he was dead. 2 *Haw.* 463.

Exigent. See *Process.*

Extortion.

IT is said, that extortion, in a large sense, signifies any oppression under colour of right; but that, in a strict sense, it signifies the taking of money by any officer, by colour of his office, either where none at all is due, or not so much is due, or where it is not yet due. 1 *Haw.* 170.

And by the statute of the 3 *Ed. 1. c. 26.* (which is only in affirmance of the common law) *No sheriff, nor other the king's officer, shall take any reward to do his office, but shall be paid of that which they take of the king; and he that so doth, shall yield twice as much, and shall be punished at the king's pleasure.*

No sheriff nor other the king's officer] Under these words, the law beginning with the *sheriffs*, are understood escheators, coroners, bailiffs, gaolers, and other inferior officers of the king, whose offices were instituted before the making of this act, which do any way concern the administration or execution of justice, or the common good of the subject, or for the king's service. 2 *Inst.* 209.

Also the justices of the peace, whose office was instituted after this act, are bound by their oath of office, to take nothing for their office of justice of the peace to be done,

done, but of the king, and fees accustomed, and costs limited by statute.

And generally, no publick officer shall take any other fees or rewards, for doing any thing relating to his office, than some statute in force gives him, or else as hath been antiently and accustomedly taken; and if he do otherwise, he is guilty of extortion. *Dalt. c. 41.*

Shall take any reward] Therefore by this statute, they can at this day take no more for doing their office, than hath been since allowed to them by authority of parliament. *2 Inst. 210.*

And all prescriptions which have been contrary to this statute, and to the common law in affirmance of which it is made, have been always holden to be void. *1 Haw. 170.*

And it has been resolved, that a promise to pay them money for the doing of a thing, which the law will not suffer them to take any thing for, is merely void. *1 Haw. 171.*

To do his office] It is not said, that he shall take no reward generally, but no reward to do his office: Thus the fee of 20d called bar fee, time out of mind taken by the sheriff of every prisoner that is acquitted, is not against this statute; for it is not taken for doing his office. *2 Inst. 210.*

But there seems to be no necessity for this distinction, for it cannot be intended to be the meaning of the statute to restrain the courts of justice, in whose integrity the law always reposes the highest confidence, from allowing reasonable fees for the labour and attendance of their officers; for the chief danger of oppression is from officers being left at their liberty to set their own rates on their labour, and make their own demands; but there cannot be so much fear of these abuses, while they are restrained to known and stated fees, settled by the discretion of the courts, which will not suffer them to be exceeded, without a proper resentment. *1 Haw. 171.*

But in the ecclesiastical court, a person was libelled against for fees, and upon motion a prohibition was granted, for that it was holden that no court had a power to establish fees: the judge of a court may think them reasonable, but that is not binding; but if on a *quantum meruit* a jury think them reasonable, then they become established fees. *1 Salk. 333.*

The

The fees in sessions, for traversing, trying, or discharging indictments, discharging recognizances, and the like, do vary according to the different customs in different places. *Dalt. c. 41.*

Shall yield twice as much] At the common law this offence is severely punishable at the king's suit, by fine and imprisonment, and also by a removal from the office in the execution whereof it was committed. And this statute doth add a greater penalty than the common law did give; for hereby the plaintiff shall recover his double damages. *2 Inst. 210. 1 Haw. 171.*

And by the *31 El. c. 5.* Actions for extortion may be laid in any county.

At the king's pleasure] That is, by the king's justices, before whom the cause depends. *2 Inst. 210.*

Indictment for extortion in a gaoler.

THE jurors for our lord the king, upon their oath present, that A. O. late of — in the said county, yeoman, on the — day of — in the — year of the reign of — was taken upon suspicion of having committed a certain felony, by — constable of — in the said county, by virtue of a warrant directed to the said — under the hand and seal of Sir William Daltton, knight, then and yet one of the justices of our sovereign lord the king, assigned to keep the peace in the said county, and was, on the same day in the year aforesaid, committed by him the said Sir William Daltton, to A. G. keeper of the gaol of our said sovereign lord the king at — in the said county, under the custody of him the said A. G. to be safely kept, upon suspicion of the felony aforesaid, and the said A. O. was detained in that prison under the custody of the said A. G. from the time that he was committed to the said prison for one month from thence next ensuing, upon suspicion of the said felony; nevertheless the said A. G. in no wise regarding the statute in that case made, and the penalty therein contained, did on the — day of — at — aforesaid, in the said county, demand and receive — pounds of lawful money of Great Britain of and from the said A. O. for ease and favour in the said gaol for the said time, in contempt of our said sovereign lord the king, and against the form of the statute aforesaid, and against the peace of our said sovereign lord the king, his crown and dignity.

Indictment

Indictment for extortion of a bailiff.

THE jurors for our lord the king upon their oath present, that A. B. late of ——— in the said county yeoman, being bailiff of the hundred of ——— in the said county, on the ——— day of ——— in the ——— year of the reign of ——— at ——— in the said county, by pretext and colour of his said office, did unjustly and by extortion take and extort 5s of one A. I. of ——— in the said county, yeoman, one of the freeholders qualified to serve upon juries in the said county, to excuse the said A. I. from attending or appearing at the assizes that were then next to be holden in and for the said county, when in fact the said A. I. was not returned by the sheriff of the said county in any panel of jurors, and also when indeed no such sum of money was due to the said A. B. for his fee for excusing the attendance or appearance of the said A. I. at the assizes aforesaid, to the evil example of other offenders, to the great damage of him the said A. I. and against the peace of our said lord the king, his crown and dignity.

False tokens. See Cheat.

Fast days.

BY the 2 & 3 Ed. 6. c. 19. for the encouragement of the fisheries, and the increase of cattle; and the 5 El. c. 5. intituled, an act touching political constitutions for the maintenance of the navy; and by the 35 El. c. 7. it is enacted as follows.

No person shall eat any manner of flesh on any Friday or Saturday, or the embring days, or in Lent, nor on any other day commonly reputed a fish day; on pain of forfeiting 20s, or being imprisoned one month.

And every person in whose house any flesh shall be eaten on fish days, and not disclosing the same to a publick officer having authority to punish the same; shall forfeit 13s 4d.

Which said forfeitures shall be, one third to the king, one third to the informer, and one third to the common use of the parish where the offence shall be committed; to be levied by the churchwardens after conviction.

Prosecution

Prosecution to be at the assizes or sessions, in three months after the offence committed.

But nothing herein shall extend to any person having the king's licence; or being in great age, and weakened thereby, or sick, or notably hurt; or a woman with child, or lying in child-bed, for eating of such one kind of flesh as she shall have great lust unto; or in prison; nor to the king's lieutenant, deputy, or captain in his armies, but the same may eat, or license his soldiers to eat flesh for lack of other victual; nor to persons licensed by the archbishop of *Canterbury*.

And such licences shall be on condition, that the person licensed shall within six days after *Candlemas*, pay to the poor box where he dwells, if he be a lord 26s 8d, a knight 13s 4d, and all others 6s 8d.

But sick persons may be licensed by the bishop of the diocese, or by the parson, vicar, or curate of the parish, or (if there be none, or he be wilful) of the next parish; and if the sickness continues above eight days, the licence shall be registred in the church book, with the knowledge of a churchwarden; and the curate shall have 4d for entry; and the same to endure no longer than such sickness.

And no licence shall extend to the eating any beef at any time of the year, nor veal from *Sep. 29*, to *May 1*, in any year.

And persons licensed (except for sickness) shall for every dish of flesh at their table, have one dish of sea fish.

Fees. See *Extortion*.

Felo de se. See *Homicide*.

Felony, Disposition of Felony, and Theftbote.

I. Felony.

FELONY is supposed by some to come from the Saxon *fell*, which signifieth fierce or cruel; of which the verb *fell* signifieth to throw down or demolish; and the substantive of that name is used to signify a mountain rough

rough and uncultivated. But the same word, with a little variation, runneth through most of the *European* languages, and signifieth more generally an offence at large; and the Saxon word *feallan* signifieth to offend, and *feallisse* an offence or *failure*; and altho' *felony*, as it is now become a technical term, signifieth in a more restrained sense an offence of an high nature, yet it is not limited to capital offences only, but still retaineth somewhat of this larger acceptation; for petit larceny is felony, altho' it is not capital.

According to Sir *Henry Spelman's* observation, it signifies such an offence, for which, during the feudal institution, a man should lose or forfeit his estate; which he derives of two northern words, *fee*, which signifies the fief, feud, or beneficiary estate, and *lon*, which signifies price or value.

It would swell this title near to the bigness of half the book, to set down every thing which may be comprehended under this word *felony*: therefore it is necessary to refer the consideration of the several particular kinds of felonies to their respective titles; as for instance, *Homicide*, *Robbery*, *Burglary*, *Rape*, *Coin*, *Forgery*, and many others; and especially the law relating to stolen goods of all kinds belongs to title *Larceny*.

The method of bringing a felon to justice from the first commission of the felony, to his condemnation and execution, is treated of under the several titles of *Hue and cry*, *Arrest*, *Examination*, *Bail*, *Commitment*, *Gaol*, *Arraignment*, *Appeal*, *Indictment*, *Confession*, *Jurors*, *Evidence*, *Clergy*, *Judgment*, *Attainder*, *Forfeiture*, *Transportation*, *Execution*. And the course and whole procedure of trying an offender, is treated of under title *Sessions*.

So that there is nothing left for this place, but to take notice of one circumstance which is common to all felonies in general, and that is, concerning the charges of commitment, prosecution, conviction, or discharge.

By the 3 *J. c. 10*. The felon shall pay the charges of his carrying to gaol, if able; to be levied by distress by warrant of one justice.

And by the statute of the 27 *G. 2. c. 3*. if he is not able, the same shall be paid, by order of such justice, by the treasurer out of the county rate; and in *Middlesex* by the overseers of the poor where the party was apprehended.

And by the 14 *G. 3. c. 20*. Every prisoner, charged with any felony or other crime, or as accessory thereto,

before any court having criminal jurisdiction, against whom no bill of indictment shall be found, or who shall on trial be acquitted, or who shall be discharged by proclamation for want of prosecution, shall be immediately set at large in open court, without paying any fee to the sheriff or gaoler; and such fees as had been usually paid in respect of such discharge, not exceeding 13 s 4 d for each prisoner, shall, on certificate of a judge or justice before whom such prisoner shall have been discharged, be paid out of the general county rate.

And by the 25 G. 2. c. 36. the court, before whom any person hath been tried and convicted of any grand or petit larceny, or other felony, may at the prayer of the prosecutor, and on consideration of his circumstances, order the treasurer of the county in which the offence shall have been committed, to pay him such sum as they shall judge reasonable, not exceeding the expences he was put to in carrying on the prosecution, with a reasonable allowance for his time and trouble; and the clerk of assize, or of the peace, shall forthwith make out such order, and deliver the same to the prosecutor, on paying 1 s, and the treasurer shall pay the same on sight, and be allowed the same in his accounts.

And by the aforesaid act of the 27 G. 2. c. 3. When any poor person shall appear on recognizance to give evidence, the court may order the treasurer to pay him such sum as they shall think reasonable, for his time, trouble, and expences, (whether the person hath been convicted or not); which order the proper officer shall make out for the fee of 6 d. Except in *Middlesex*, where the same shall be paid by the overseers of the poor where the person was apprehended.

II. Misprision of Felony.

Misprision of felony (from the *French* word *mespris*, neglect or contempt, 3 *Inst.* 36.) is the concealing of a felony which a man knows, but never consented to: for if he consented, he is either a principal or accessory in the felony, and consequently guilty of misprision of felony and more. 1 *H. H.* 374.

For it is said, that every felony includes misprision of felony, and may be proceeded against as a misprision only, if the king pleases. 1 *Haw.* 125.

The punishment of misprision of felony in a common person, is fine and imprisonment; in an officer, as sheriff or bailiff of liberties, imprisonment for a year, and ransom at the king's pleasure, by the statute of 3 Ed. 1. c. 9.

If any person will save himself from the crime of misprision, he must discover the offence to a magistrate with all speed that he can. 3 Inst. 140.

Misprision, in a larger sense, is used to signify every considerable misdemeanor, which hath not a certain name given to it in the law.

III. Theftbote.

Theftbote (from the Saxon words *theft*, and *bote*, boot or amends) is, where one not only knows of a felony but takes his goods again, or other amends not to prosecute. 1 Haw. 125.

But the bare taking of one's own goods again, which have been stolen, is no offence, unless some favour be shewn to the thief. 1 Haw. 125.

This offence is very nearly allied to felony, and is said to have been anciently punished as such; but at this day it is punishable only with ransom and imprisonment, unless it were accompanied with some degree of maintenance given to the felon, which makes the party an accessory after the fact. 1 Haw. 125.

Warrant for felony.

Westmorland. } To the constable of——

FORASMUCH as A. I. of———in the county of ——yeoman, hath this day made information and complaint upon oath, before me———one of his majesty's justices of the peace for the said county, that this present day divers goods of him the said A. I. to wit,———have feloniously been stolen, taken, and carried away from the house of him the said A. I. at ——aforesaid, in the county aforesaid, and that he hath just cause to suspect, and doth suspect that A. O. late of———yeoman, feloniously did steal, take and carry away the same [Or otherwise as the case shall be:] These are therefore to command you forthwith to apprehend him the said A. O. and to bring him before me

Felony, &c.

to answer unto the said information and complaint, and to be further dealt withal according to law. Herein fail you not. Given under my hand and seal the——day of——in the year——.

The forms of indictments for stolen goods of various kinds, are inserted under the title **Larceny**.

Feme covert. See **Wife**.

Fern. Burning of it in forests. See **Burning**.

Fire. See **Burning**.

Fireworks.

Fireworks a nuisance.

1. **I**T shall not be lawful for any person (of what age, sex, degree, or quality soever) to make or cause to be made, or to sell or expose to sale, any squibs, rockets, serpents, or other fireworks, or any cases, moulds or other implements for making the same; or to permit the same to be cast or fired from his house or other place thereto belonging, into any publick street or road; or to throw or fire, or be aiding in throwing or firing the same, in any publick street, house, shop, river, or highway; and every such offence shall be adjudged a common nuisance. 9 & 10 W. c. 7. s. 1.

Making or selling rockets.

2. And if any person shall make or cause to be made, or give, sell, or offer to sale, any squibs, rockets, serpents, or other fireworks, or any cases, moulds, or other implements for making the same; he shall on conviction before one justice, or chief magistrate, by confession, or oath of two witnesses, forfeit 5 l., half to the poor, and half to the prosecutor; to be levied by distress, by warrant of such justice or chief magistrate. 9 & 10 W. c. 7. s. 2.

Suffering rockets to be fired.

3. And if any person shall permit any the same to be cast or fired, from his house or other place thereto belonging, into any publick street or road, or any other house or place; he shall forfeit 20 s in like manner. 9 & 10 W. c. 7. s. 2.

Firing rockets.

4. And if any person shall cast or fire, or be aiding in casting or firing any the same, into any publick street, house, shop, river or highway; he shall forfeit 20 s in like

like manner; and if he shall not immediately on conviction pay to the justice the said forfeiture for the uses aforesaid, he shall commit him to the house of correction to be kept to hard labour for any time not exceeding one month, unless he shall sooner pay the forfeiture. 9 & 10 W. c. 7. s. 3.

5. But nothing herein shall extend to the officers of Exception. the ordnance, or artillery company. 9 & 10 W. c. 7. s. 4, 5.

Fish and fishing. See Game.

Fish salted. See Excise.

Flight. See Forfeiture.

Forcible entry and detainer.

FORCE, in the common law, is most commonly taken in ill part, for unlawful violence. 1 Inst. 161.

It seems that at the common law, a man dispossessed of any lands or tenements, if he could not prevail by fair means, might lawfully regain the possession thereof by force, unless he were put to a necessity of bringing his action, by having neglected to re-enter in due time; And it seems certain, that even at this day, he who is wrongfully dispossessed of his goods, may justify the retaking of them by force from the wrong doer, if he refuse to redeliver them; for the violence which happens thro' the resistance of the wrongful possessor, being originally owing to his own fault, gives him no just cause of complaint, inasmuch as he might have prevented it by doing as he ought.

1 Haw. 140.

But this indulgence of the common law, in suffering persons to regain the lands they were unlawfully deprived of, having been found by experience to be very prejudicial to the publick peace, by giving an opportunity to powerful men under the pretence of feigned titles, forcibly to eject their weaker neighbours, and also by force to retain their wrongful possessions, it was thought necessary by many severe laws to restrain all persons from the use of such violent methods of doing themselves justice.

1 Haw. 141.

Forcible entry and detainer.

However even at this day, in an *action* of forcible entry grounded on those laws, if the defendant make himself a title which is found for him, he shall be dismissed without any inquiry concerning the force; for howsoever he may be punishable *at the king's suit*, for doing what is prohibited by statute, as a contemner of the laws, and disturber of the peace, yet he shall not be liable to pay any damages for it to the plaintiff, whose injustice gave him the provocation in that manner to right himself. 1 *Haw.* 141.

Yet still forcible entry and detainer are offences at the common law; and the prosecutor, if he pleases, may proceed in that way: but then the indictment ought to express not only the common technical words *with force and arms*, but also such circumstances as thereby it may appear upon the face of the indictment to be more than a common trespass. *Burr. Mansf.* 1698, 1731.

But the safest and most usual way is to proceed upon the statutes. Concerning which, (after having premised, that *they who keep possession with force, in lands and tenements, whereof they or their ancestors, or they whose estate they have in the same, have continued their possession in the same, by three whole years next before without interruption, shall not be endamaged by force of any of the statutes concerning forcible entry*, 8 H. 6. c. 9. s. 7. 1 *Haw.* 152.) I shall consider those several statutes, with the interpretation that hath been put upon them, under the following heads:

I. *What is a forcible entry.*

II. *What is a forcible detainer.*

III. *How the same are punishable by action at law.*

IV. *How punishable at the general sessions.*

V. *How punishable by one justice.*

VI. *How punishable on a certiorari.*

VII. *How punishable as a riot.*

I. *What is a forcible entry.*

By the 5 R. 2. c. 8. *None shall make any entry into any lands or tenements (or benefice of holy church, 15 R. 2. c. 2. or other possessions, 8 H. 6. c. 9. s. 2.) but where entry is given by the law; and in such case not with strong hand, nor with multitude of people, but only in peaceable and easy manner; on pain of imprisonment and ransom at the king's will.*

Or

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Or other possessions] It seems clear, that no one can come within the danger of these statutes, by a violence offered to another in respect of a *way*, or such like easement, which is no possession. And there seems to be no good authority, that an indictment will lie in this case for a *common*, or *office*. 1 Haw. 146.

Not with strong hand, nor with multitude of people] It seems certain, that if one who pretends a title to lands, barely go over them, either with or without a great number of attendants, armed or unarmed, in his way to the church or market, or for such like purpose, without doing any act, which either expressly or impliedly amounts to a claim of such lands, he cannot be said to make an entry thereinto. 1 Haw. 144.

But it seemeth, that if a person enter into another man's house or ground, either with apparent violence offered to the person of any other, or furnished with weapons, or company, which may offer fear, tho' it be but to cut, or take away another man's corn, grass, or other goods, or to fell or crop wood, or do any other like trespass, and tho' he do not put the party out of his possession, yet it seemeth to be a forcible entry. *Dalt. c. 126.*

But if the entry were peaceable, and after such entry made, they cut or take away any other man's corn, grass, wood, or other goods, without apparent violence or force; tho' such acts are counted a disseisin with force, yet they are not punishable as forcible entries. *Dalt. c. 126.*

But if he enter peaceably, and there shall by force or violence cut or take away any corn, grass, or wood, or shall forcibly or wrongfully carry away any other goods there being; this seemeth to be a forcible entry punishable by these statutes. *Dalt. c. 126.*

So also shall those be guilty of a forcible entry, who having an estate in land, by a defeasible title, continue with force in the possession thereof, after a claim made by one who had a right of entry thereto. 1 Haw. 145.

But he who barely agrees to a forcible entry made to his use, without his knowledge or privity, shall not be adjudged to make an entry within these statutes, because he no way concurred in, or promoted the force. 1 Haw. 145.

And, in general, it seemeth clear, that to denominate the entry forcible, it ought to be accompanied with some circumstances of actual violence, or terror; and therefore

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that an entry which hath no other force than such as is implied by the law, in every trespass whatsoever, is not within these statutes. 1 *Haw.* 145.

As to the matter of *violence*; it seems to be agreed, that an entry may be forcible, not only in respect of a violence actually done to the person of a man, as by beating him if he refuse to relinquish his possession, but also in respect of any other kind of violence in the manner of the entry, as by breaking open the doors of a house, whether any person be in it or not, especially if it be a dwelling house, and perhaps also by any act of outrage after the entry, as by carrying away the party's goods; but it seems that an entry is not forcible, by the bare drawing up a latch, or pulling back the bolt of a door, there being no appearance therein of being done by *strong hand, or multitude of people*; and it hath been holden, that an entry into a house thro' a window, or by opening a door with a key, is not forcible. 1 *Haw.* 145.

In respect of the circumstances of *terror*; it is to be observed, that wherever a man, either by his behaviour or speech, at the time of his entry, gives those who are in possession just cause to fear, that he will do them some bodily hurt, if they will not give way to him, his entry is esteemed forcible, whether he cause such a terror, by carrying with him such an unusual number of attendants, or by arming himself in such a manner, as plainly intimates a design, or by actually threatening to kill, maim, or beat those who shall continue in possession, or by giving out such speeches as plainly imply a purpose of using force, as if one say that he will keep his possession in spite of all men, or the like. 1 *Haw.* 145.

But it seems that no entry shall be judged forcible, from any threatening to spoil another's *goods, or to destroy his cattle, or to do him any other such like damage, which is not personal.* 1 *Haw.* 146.

However it is clear, that it may be committed by a single person, as well as by twenty. 1 *Haw.* 146.

But nevertheless all those who accompany a man, when he makes a forcible entry, shall be judged to enter with him, whether they actually come upon the lands or not. 1 *Haw.* 144.

II. What is a forcible detainer.

It seemeth certain, that the same circumstances of violence or terror which will make an entry forcible, will make

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make a detainer forcible also. And a detainer may be forcible, whether the entry were forcible or not. 1 Haw. 146.

III. How they are punishable by action at law.

If any person be put out or disseised of any lands or tenements in forcible manner, or put out peaceably, and after bolden out with strong hand; the party grieved shall have assize of novel disseisin, or writ of trespass against the disseisor; and if he recovers, he shall have treble damages, and the defendant moreover shall make fine and ransom to the king. 8 H. 6. c. 9. s. 6.

The party grieved shall have assize, &c.] But this action, being at the suit of the party, and only for the right, is only where the entry of the defendant was not lawful; for if a man entereth with force, where his entry is lawful, he shall not be punished by way of action; but yet he may be indicted upon the statute, for the indictment is for the force, and for the king, and he shall make fine to the king, although his right is never so good. *Dalt. c. 129.*

Treble damages] And this he shall recover, as well for the mesne occupation, as for the first entry: And albeit he shall recover treble damages, yet he shall recover costs, which shall be trebled also; for the word *damages* includeth costs of suit. 1 *Inst. 257.*

IV. How punishable at the general sessions.

The party grieved, if he will lose the benefit of his treble damages and costs, may be aided and have the assistance of the justices at the general sessions, by way of indictment (A) on the statute of 8 H. 6. Which being found there, he shall be restored to his possession, by a writ of restitution granted out of the same court to the sheriff. *Dalt. c. 129.*

In the caption of which indictment, it will be sufficient to say, *justices assigned to keep the peace of our lord the king*, without shewing that they have authority to hear and determine felonies and trespasses; for the statute enables all justices of the peace, as such, to take such indictments. 1 Haw. 147.

And the tenement in which the force was made, must be described with convenient certainty; and must set forth that the defendant actually entred; and ousted the party grieved;

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grieved; and continueth his possession at the time of finding the indictment; otherwise he cannot have restitution, because it doth not appear that he needeth it. 1 *Haw.* 147, 149, 150.

But if a man's wife, children, or servants do continue in the house or upon the land, he is not ousted of his possession; but his cattle being upon the ground, do not preserve his possession. *Dalt.* c. 132.

An indictment for forcible entry was quashed, for not setting forth, that the party was seised or disseised, or what estate he had in the tenement; for if he had only a term for years, then the entry must be laid, into the freehold of *A.* in the possession of *B.* 3 *Salk.* 169.

V. How punishable by one justice.

1. For a more speedy remedy, the party grieved may complain to any one justice; or to a mayor, sheriff, or bailiff, within their liberties. 8 *H. 6. c. 9.*

2. But altho' one justice alone may proceed in such cases, yet it may be adviseable for him, if the time for viewing the force will suffer it, to take to his assistance one or two more justices.

3. Concerning which power of one justice, it is enacted as follows:

After complaint made to such justice, by the party grieved, of a forcible entry made into lands, tenements, or other possessions, or forcible holding thereof, he shall within a convenient time, at the costs of the party grieved (without any examining or standing upon the right or title of either party) take sufficient power of the county, and go to the place where such force is made. 15 R. 2. c. 2. 8 H. 6. c. 9. s. 2. Dalt. c. 44.

Complaint——by the party grieved] Yet these words do not inforce any necessity of such a complaint; for it is holden, that the justice may and ought to proceed, upon any information or knowledge thereof whatsoever, tho' no complaint at all be brought unto him, by any party grieved thereby. *Lamb.* 147.

Power of the county] All people of the county, as well the sheriff as other, shall be attendant on the justices, to arrest the offenders; on pain of imprisonment and fine to the king. 15 *R. 2. c. 2.*

4. And if the doors be shut, and they within the house shall deny the justice to enter, it seems he may break open the house, to remove the force. *Dalt.* c. 44.

5. And

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5. And if after such entry made the justice *shall find such force*; he *shall cause the offenders to be arrested.* 15 R. 2.

2. 8 H. 6. c. 9. f. 2.

6. He shall also take away their weapons and armour, and cause them to be appraised, and after to be answered to the king as forfeited, or the value thereof. *Dalt. c. 44.*

7. Also such justice ought to *make a record (B) of such force by him viewed*; which record shall be a sufficient conviction of the offenders, and the parties shall not be allowed to traverse it: And this record, being made out of the sessions, by a particular justice, may be kept by him; or he may make it indented, and certify the one part into the king's bench, or leave it with the clerk of the peace; and the other part he may keep himself. For this view of the force by the justice, being a judge of record, maketh this record thereof in the judgment of the law, as strong and effectual, as if the offenders had confessed the force before him; and touching the restraining of traverse, more effectual, than if the force had been found by a jury, upon the evidence of others. (This is, as to the fine and imprisonment, but not as to restitution.) 15 R. 2. c. 2. *Dalt. c. 44.*

8. And the offenders, being arrested (as before is said), *shall be put in the next gaol (C) there to abide convict by the record of the same justice, until they have made fine and ransom to the king.* 15 R. 2. c. 2.

Shall be put in the next gaol] It is said, that the justice hath no power to commit the offender to gaol, unless he do it upon his own view of the fact, and not upon the jury finding the same afterwards. *Dalt. c. 44. 1 Haw. 142.*

And if such offenders, being in the house at the coming of the justice, shall make no resistance, nor make shew of any force, then the justice cannot arrest or remove them at all upon such view. *Dalt. c. 44.*

But howsoever, if the force be found afterwards, by the inquiry of the jury, the justice may bind the offenders to the peace; and if they be gone, he may make his warrant to take them, and may after send them to the gaol, until they have found sureties for the peace. *Dalt. c. 44.*

Note; Mr. Dalton, in this place says, *good behaviour*, which I have presumed to alter to *the peace*, as deeming it much the safer; and not being sufficiently satisfied concerning the power of a justice of the peace to bind to the good behaviour in the like cases, which power Mr. Dalton hath enlarged more than all other authors, with-

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out any assistance from the commission of the peace, or any act of parliament, other than had been for above 200 years before.

Until they have made fine] *H. 1 G. 2. K. and Sir Edm. Ellewel.* He was brought up upon a *habeas corpus*, with a return of the cause of his commitment, which was upon a conviction of forcible entry and detainer. And it being moved to discharge him upon exceptions to the commitment, the court refused to enter into the consideration of them, till the conviction was likewise regularly removed before them. But by consent he was bailed in the mean time. And this term the conviction being before the court, it appeared that there was no fine set by the justices, and it was therefore moved to be quashed. It was agreed on both sides, that there should be a fine; but it was insisted, that it being now before the king's bench by a certiorari, they might set the fine. But by the court, We are not to execute the judgment of an inferior court. The conviction is to be upon view, and they who view the nature of the force are the properest judges what fine to set; and though a certiorari should come before the fine is set, yet it would be no contempt in the justices to compleat their judgment by setting one. *Lambard* indeed was of opinion, that the justices could not set the fine at all; but upon what foundation we can never imagine. The justices are not bound to do it upon the spot, but may take a reasonable time to consider of the fine; because by the words of the act, the commitment is to be, till he has paid the fine. The conviction must be quashed, and the defendant discharged. *Str. 794. L. Raym. 1515. Sess. C. V. 1. 289.*

And the same was likewise solemnly resolved in *Lighton's* case; and that the justice may assess the same, either before the commitment or after. *1 Haw. 142.*

And the fine must be assessed upon every offender severally, and not upon them jointly; and the justice ought to estreat the fine, and to send the estreat into the exchequer, that from thence the sheriff may be commanded to levy it for his majesty's use. *Dalt. c. 44.*

But upon payment of the fine to the sheriff, or upon sureties found (by recognizance) for the payment thereof, it seemeth that the justice may deliver the offenders out of prison again at his pleasure. *Dalt. c. 44.*

9. And so much concerning removing the force: But the party ousted cannot be restored to his possession by the justice's view of the force; nor unless the same force be found by the inquiry of a jury.

Concerning

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Concerning which it is enacted as follows: *And tho' that the persons making such entry be present, or else departed before the coming of the justice; he may notwithstanding in some good town next to the tenements so entered, or in some other convenient place by his discretion (and that, tho' he go not to see the place where the force is; Dalt. c. 44.) have power to enquire by the people of the county, as well of them that make such forcible entry, as of them which hold the same with force,* 8 H. 6. c. 9. f. 3.

10. In order to which, the justice shall make his precept (D) to the sheriff, commanding him in the king's behalf, to cause to come before him, sufficient and indifferent persons, dwelling next about the lands so entered, to enquire of such entries; whereof every man shall have lands or tenements of 40 s a year, above reprises. And the sheriff shall return issues on every of them, at the day of the first precept returnable 20 s, and at the second day 40 s, and at the third day 100 s, and at every day after double. And the sheriff making default, shall on conviction before the same justice, or before the judge of assize, forfeit 20 l, half to the king, and half to him who shall sue, with costs; and moreover shall make fine and ransom to the king. 8 H. 6. c. 9. f. 4, 5.

Before the same justice] And the justice may proceed against the sheriff for this default, either by bill at the suit of the party, or by indictment at the suit of the king. *Dalt. c. 44.*

11. And the defendant also, if he is not present, ought to be called to answer for himself; for it is implied by natural justice in the construction of all laws, that no one ought to suffer any prejudice thereby, without having first an opportunity of defending himself. 1 Haw. 154.

12. And it seems to be settled at this day, that if the defendant tender a traverse of the force, the justice ought not to make any restitution, till the traverse be tried. 1 Haw. 154.

13. The defendant may also by the 31 El. c. 11. plead three years possession; whereby it is enacted, that no restitution upon an indictment of forcible entry, or holding with force, shall be made, if the person indicted have had the occupation, or been in quiet possession for three years together next before the indictment found, and his estate therein not determined; and restitution shall stay till that be tried: and if it is found against the party indicted, he shall pay such costs and damages as the judges or justices shall assess; to be recovered as costs and damages in judgment or other actions.

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And it hath been holden that the plea of such possession is good, without shewing under what title, or of what estate such possession was; because it is not the title, but possession only, which is material in this case. 1 *Hov.* 152.

14. And it was holden by the court in *Leighton's case*, that if the defendant shall either traverse the entry or the force, or plead that he has been three years in possession, the justice may summon a jury for the trial of such traverse, for it is impossible to determine it upon view; and if the justice have no power to try it, it would be easy for any one to elude the statute by the tender of such a traverse, and therefore by a necessary construction the justice must needs have this power as incidental to what is expressly given him. 1 *Hov.* 142.

15. And this traverse must be tendered in writing, and not by a bare denial of the fact in words; for thereupon a *venire facias* must be awarded, a jury returned, the issue tried, a verdict found, and judgment given, and costs and damages awarded; and there must be a record, which must be in writing, to do all this, and not a verbal plea. *Dalt. c. 133.* 1 *Hov.* 154.

16. Upon which traverse tendered, the justice shall cause a new jury to be returned by the sheriff, to try the traverse; which may be done the next day, but not the same day. *Dalt. c. 133.*

17. And it seemeth, that he who tendereth the traverse, shall bear all the charges of the trial; and not the king, or the party prosecuting. *Dalt. c. 133.*

18. And if such forcible entry or detainer be found (E) before such justice, then the said justice shall cause to reseise (F) the lands and tenements so entered or holden, and shall restore the party put out, to the full possession of the same. 8 H. 6. c. 9. f. 3.

The said justice] It seems to be agreed, that no other justices of the peace, except those before whom the indictment shall be found, shall have any power either at the sessions or out of it, to make any award of restitution. 1 *Hov.* 152.

Shall cause to reseise] And the justice may break open the house by force, to reseise the same; and so may the sheriff do, having the justice's warrant. *Dalt. c. 44.*

Reseise] That is, shall remove the force, by putting out all such offenders as shall be found in the house, or

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or upon the lands, that entered or held with force. *Dalt.* c. 130.

And shall restore the party put out] And this he may do in his own proper person; or he may make his warrant to the sheriff to do it. *Dalt.* c. 44. 1 *Haw.* 151, 2.

19. And by 21 *J. c.* 15, it is enacted, *that such judges, justices, or justice of the peace, as may give restitution unto tenants of any estate of freehold, may give the like unto tenants for term of years, tenants by copy of court roll, guardians by knight's service, tenants by elegit, statute merchant and staple, of lands or tenements by them so holden, which shall be entered upon by force, or holden from them by force.*

VI. How punishable on a certiorari.

Although regularly the justices only who were present at the inquiry, and when the indictment was found ought to award restitution; yet if the record of the presentment or indictment shall be certified by the justice or justices into the king's bench, or the same presentment or indictment be removed and certified thither by certiorari, the justices of that court may award a writ of restitution to the sheriff, to restore possession to the party expelled; for the justices of the king's bench have a supreme authority in all cases of the crown. *Dalt.* c. 44.

Also where upon a removal of the proceedings into the king's bench the conviction shall be quashed, the court will order restitution to the party injured. As in the case of *K. and Jones, M. 8 G.* A conviction of forcible entry was quashed for the old exception of *messuage* or *tenement*, by reason of the uncertainty; but the restitution was opposed, on an affidavit that the party's title (which was by lease) was expired since the conviction. But the court said, they had no discretionary power in this case, but were bound to award restitution on quashing the conviction. *Str.* 474.

VII. How punishable as a riot.

If a forcible entry or detainer shall be made by three persons or more, it is also a riot, and may be proceeded against as such, if no enquiry hath before been made of the force. *Dalt.* c. 44.

A. In-

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A. Indictment for a forcible entry and detainer.

Westmorland. **T**HE jurors for our lord the king upon their oath present, that A. I. late of the parish of — in the county aforesaid, gentleman, on the — day of — in the — year of the reign of — was possessed of a certain messuage, with the appurtenances, situate, lying, and being in — in the parish aforesaid, in the county aforesaid, for a certain term of years, then and still to come, and unexpired, and being so possessed thereof, one A. O. late of — in the said county, yeoman, afterwards, to wit, the said — day of — in the year aforesaid, into the same messuage, with the appurtenances aforesaid, in — aforesaid, in the parish and county aforesaid, with force and arms, and with strong hand, unlawfully did enter, and the said A. I. from the peaceable possession of the said messuage, with the appurtenances aforesaid, then and there with force and arms, and with strong hand, unlawfully did expel and put out, and the said A. I. from the possession thereof, so as aforesaid, with force and arms, and with strong hand, being unlawfully expelled and put out, the said A. O. him the said A. I. from the aforesaid — day of — in the year aforesaid, until the day of the taking this inquisition, from the possession of the said messuage, with the appurtenances aforesaid, with force and arms, and with strong hand, unlawfully and injuriously then and there did keep out, and still doth keep out, to the great damage of the said A. I. against the peace of our said lord the king, and against the form of the statutes in that case made and provided.

Note ; If it is a freehold, then the party must be said to be *seised* thereof in his demesne as of fee ; and consequently he must be thereof *disseised* : otherwise if it is of a lesser estate, of which he is not properly said to be *seised*, but possessed thereof at the will of the lord, according to the custom of the manor, or the like, and then he must be *expelled, ejected, amoved, or the like.*

B. Record of a forcible detainer upon view.

Note ; The books upon the office of a justice of the peace generally set forth, that the record ought to be in the present tense, and not in the time past (and herewith do accord the adjudged cases in the court of king's bench,

bench, *Str.* 443.) ; yet nevertheless they all exhibit the form of a record in the time past, and not in the present : Therefore I have taken the liberty to alter the same, from the record in *L. Raymond* of the conviction of Sir *Edm. Elwell* aforesaid, and others ; adding the fine thereunto, for the want of which that conviction was quashed. And I have given the form of a record of a forcible detainer, rather than of a forcible entry, because the justice for the most part cannot be supposed to be present at the entry, as not having knowledge thereof until after the entry is made.

Kent, **B**E it remembred, that on the 15th of September, to wit. in the first year of the reign of our sovereign lord George the second of Great Britain, France, and Ireland, king, defender of the faith, and so forth, at Beckingham in the county of Kent, aforesaid, *Eliz. Elwell*, complaineth to us Sir *E. Bettenfon*, baronet, *P. Burrel*, and *W. Passenger*, esquires, three of the justices of our said lord the king assigned to keep the peace in the said county, and also to hear and determine divers felonies, trespasses and other misdemeanors in the said county committed, that Sir *Edm. Elwell*, late of London, baronet, *Joseph Billers*, late of ----- and *Daniel Monty*, late of ----- into the messuage of her the said *E. E.* being the mansion house of her the said *E. E.* called Langley house, situate within the parish of Beckingham aforesaid, did enter, and her the said *E. E.* of the messuage aforesaid, whereof the said *E. E.* at the time of the entry aforesaid, was seised as of the freehold of her the said *E. E.* for the term of her life, unlawfully ejected, expelled, and amoved, and the said messuage from her the said *El. E.* unlawfully, with strong hand and armed power, do yet hold and from her detain, against the form of the statute in such case made and provided ; whereupon the same *El. E.* then to wit, on the said 15th day of Sep. at the parish of *B.* aforesaid, prayeth of us, so as aforesaid being justices, to her in this behalf that a due remedy be provided, according to the form of the statute aforesaid : Which complaint and prayer by us the aforesaid justices being heard, we the aforesaid *E. B.* baronet, *P. B.* and *W. P.* esquires, justices aforesaid, to the messuage aforesaid personally have come, and do then and there find and see the aforesaid *Edm. E. J. B.* and *D. M.* the aforesaid messuage, with force and arms, unlawfully, with strong hand and armed power, detaining, against the form of the statute in such case made and provided, according as she the same *El. E.* so as aforesaid hath unto us complained : Therefore it is considered by us the aforesaid justices, that the aforesaid *Edmund Elwell*, *Joseph Billers* and

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Daniel Monty, of the detaining aforesaid with strong hand, by our own proper view then and there as is aforesaid, are convicted, and every of them is convicted, according to the form of the statute aforesaid; Whereupon we the justices aforesaid, upon every of the aforesaid Ed. E. J. B. and D. M. do set and impose severally a fine of 10 l of good and lawful money of Great Britain, to be paid by them and every of them severally to our said sovereign lord the king, for the said offences; and do cause them, and every of them, then and there to be arrested; and the same Ed. E. J. B. and D. M. being convicted, and every of them being convicted upon our own proper view, of the detaining aforesaid, with strong hand as is aforesaid, by us the aforesaid justices are committed, and every of them is committed, to the gaol of our said lord the king, at Maidstone, in the county of Kent aforesaid, being the nearest gaol to the messuage aforesaid, there to abide respectively, until they shall have paid their several fines respectively, to our said lord the king, for their respective offences aforesaid. Concerning which the premisses aforesaid, we do make this our record. In witness whereof, we the aforesaid E. B. baron, P. B. and W. P. esquires, the justices aforesaid, to this record our hands and seals do set, at the parish of B. aforesaid, in the county of Kent aforesaid, on the 15th day of Sep. in the first year aforesaid of the reign of our said sovereign lord the now king.

C. Mittimus for forcible detainer.

Westmorland. **E**DWARD Hassel, esquire, one of the justices of our sovereign lord the king's majesty, assigned to keep the peace within the said county of W. and also to hear and determine divers felonies, trespasses, and other misdemeanors in the said county committed; To the keeper of his majesty's gaol at ----- in the said county, and to his deputy and deputies there, and to every of them, greeting: Whereas upon complaint made unto me this present day, by A. I. of ----- in the said county, yeoman, I went immediately to the dwelling house of the said A. I. at ----- aforesaid in the said county, and there found A. O. late of ----- labourer, B. O. late of the same, weaver, and C. O. late of ----- butcher, forcibly with strong hand and armed power, holding the said house, against the peace of our said lord the king, and against the form of the statute in such case made and provided: Therefore I send you, by the bringers hereof, the bodies of the said A. O. B. O. and C. O. convicted of the said forcible holding, by mine own view, testimony and record;

record; commanding you in his said majesty's name to receive them into your said gaol, and there safely to keep them, and every of them respectively, until they shall have respectively paid the several sum of 10*l*, of good and lawful money of Great Britain, to our said sovereign lord the king, which I have set and imposed upon every of them separately, for a fine and ransom for their said trespasses respectively. Herein fail you not, at the peril that may follow thereof. Given at ————
aforesaid, in the county aforesaid, under my seal, the ————
day of ———— in the ———— year of the reign of our said sovereign lord king George the third.

Note; By the forms in all the books, all the offenders stand committed until all have paid, so as that the first shall not be discharged on payment of his own fine, but continue until all the rest have paid likewise; which seems unreasonable, and is not warranted by the statute.

D. Precept to the sheriff to return a jury.

Westmorland. **R**ICHARD Whinfield, *esquire*, one of the justices of our lord the king, assigned to keep the peace in the said county, and also to hear and determine divers felonies, trespasses, and other misdemeanors in the said county committed; To the sheriff of the said county, greeting: On behalf of our said lord the king, I command you, that you cause to come before me at ———— in the county aforesaid, on the ———— day of ———— next ensuing, twenty-four sufficient and indifferent men, of the neighbourhood of ———— aforesaid, in the county aforesaid, every of whom shall have lands or tenements of 40*s* yearly at the least, above reprises, to inquire upon their oaths for our said lord the king, of a certain entry made with strong hand (as it is said) into the messuage of one A. I. at ———— aforesaid, in the county aforesaid, against the form of the statute in such case made and provided. And you are to return upon every of the jurors by you in this behalf to be impannelled, 20*s* of issues at the aforesaid day. And have you then there this precept. And this you shall in no wise omit, upon the peril that shall thereof ensue. Witness the said R. W. at ———— in the county aforesaid, the ———— day of ———— in the ———— year of the reign of ————

The jurors oath.

YOU shall true inquiry and presentment make of all such things as shall come before you, concerning a forcible entry [or detainer] said to have been lately committed in the dwelling house of — yeoman, at — in this county; you shall spare no one for favour or affection, nor grieve any one for hatred or ill-will, but proceed herein according to the best of your knowledge, and according to the evidence that shall be given to you: So help you god.

The oath that A. F. your foreman hath taken on his part, you and every of you shall truly observe, and keep on your parts: So help you god.

E. The inquisition, indictment, or finding of the jury.

Westmorland. **A**N inquisition for our sovereign lord the king, indented and taken at — in the said county, the — day of — in the — year of the reign of — by the oaths of — good and lawful men of the said county, before J. P. esquire, one of the justices of our said lord the king, assigned to keep the peace in the said county, and also to hear and determine divers felonies, trespasses, and other misdemeanors in the same county committed, who say upon their oaths aforesaid, that A. I. of — aforesaid, yeoman, long since lawfully and peaceably was seised in his demesne as of fee [if it is not freehold, then say, possessed] of and in one messuage, with the appurtenances, in — aforesaid, in the county aforesaid, and his said possession [and seisin] so continued until A. O. late of — yeoman, B. O. late of the same, yeoman, and C. O. late of the same, yeoman, and other malefactors unknown, the — day of — now last past, with strong hand and armed power, into the messuage aforesaid, with the appurtenances aforesaid, did enter, and him the said A. I. thereof disseised, and with strong hand expelled; and him the said A. I. so disseised and expelled from the said messuage with the appurtenances aforesaid, from the said — day of — until the day of the taking of this inquisition, with like strong hand and armed power did keep out, and do yet keep out, to the great disturbance of the peace of our said lord the king,

Forcible entry and detainer.

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and against the form of the statute in such case made and provided.

We whose names are hereunto set, being the jurors above-said, do upon the evidences now produced before us, find the inquisition aforesaid true.

A. B.
C. D. &c.

F. Warrant to the sheriff for restitution.

Westmorland. **M**A RTIN Dunn, esquire, one of the justices of our sovereign lord the king, assigned to keep the peace in the said county, and also to hear and determine divers felonies, trespasses, and other misdemeanors in the said county committed: To the sheriff of the said county, greeting: *Whereas by an inquisition taken before me the justice aforesaid, at——in the county aforesaid, on this present——day of——in the——year of the reign of——upon the oaths of——and by virtue of the statutes made and provided in cases of forcible entry and detainer, it is found, that A. O. late of——yeoman, and B. O. late of——yeoman, on the——day of——now last past, into a certain messuage, with the appurtenances, of A. I. of——aforesaid, in the county aforesaid, gentleman, situate, lying, and being at——aforesaid, in the county aforesaid, with force and arms did enter, and him the said A. I. thereof then with strong hand did disseise and drive out, and him the said A. I. thus driven out from the aforesaid messuage, with the appurtenances, from the——day of——aforesaid, to this present day of the taking of the said inquisition, with strong hand and armed force did keep out, and do yet keep out, as by the inquisition aforesaid more fully appeareth of record: Therefore on the behalf of our said sovereign lord the king, I charge and command you, that taking with you the power of the county (if it be needful) you go to the said messuage and other the premisses, and the same with the appurtenances you cause to be resealed, and that you cause the said A. I. to be restored and put into his full possession thereof, according as he, before the entry aforesaid, was seised, according to the form of the said statutes. And this you shall in no wise omit, on the penalty thereon incumbent. Given under my hand and seal at——in the said county, the——day——in the——year of the reign of——*

Artificers going
out of the king-
dom.

1. BY the 5 G. c. 27. If any person shall contract with, or entice, to endeavour to persuade any manufacturer or artificer in wool, iron, steel, brass, or any other metal, clockmaker, watchmaker, or any other artificer or manufacturer, to go out of this kingdom, into any foreign country out of his majesty's dominions, and shall (on prosecution in 12 months) be convicted thereof on indictment or information, in the courts at *Westminster*, assizes or sessions of the county where the offence shall be committed; he shall for the first offence be fined not exceeding 100*l*, and be imprisoned for three months, and until the fine be paid; for the second offence, shall be fined at the discretion of the court, and be imprisoned 12 months, and till the fine is paid. *f. 1, 2.*

And if any subject, being such artificer or manufacturer, shall go into any country out of his majesty's dominions, to exercise or teach any the said manufactories to foreigners, or if any subject who shall be in any such foreign country, and there exercise any the said manufactories, shall not return in six months next after warning be given him, by the ambassador, minister, or consul, or person authorized by him, or by a secretary of state, and from thenceforth continually inhabit within this realm; he shall be incapable of any legacy, or of being executor, or administrator, and of taking any lands, by descent, devise, or purchase, and forfeit his lands and goods, and be deemed an alien, and out of the king's protection. *f. 3.*

And on complaint on oath before a justice, that any person is endeavouring to seduce or draw away any such manufacturer or artificer, or that he hath contracted or is preparing to go out of the kingdom; he may issue his warrant to bring such person before him or some other justice; and if it shall appear to such justice by confession, or the oath of one witness, that such person was guilty of any the said offences, he may bind him over to the next assizes or sessions, to answer the premises; and if he shall upon indictment be there convicted of any such promise or contract, or preparation to go abroad beyond the seas, he shall give such security, not to depart out of the realm, as such court shall think reasonable, and be imprisoned untill such security be given. *f. 4.*

And by the 23 G. 2. c. 13. If any person shall contract with, or endeavour to persuade or seduce any artificer in the manufactures of *Great Britain*, to go into any foreign country, not belonging to the crown of *Great Britain*; and

and shall be thereof convicted, in twelve months, in the king's bench, or at the assizes; he shall for every such person forfeit 500 l, and be imprisoned in the common goal for twelvemonths, and till payment of the forfeiture; and for a second or other subsequent offence, shall forfeit 1000 l, and be imprisoned two years, and till payment.

f. 1, 2.

2. By the 23 G. 2. c. 13. If any person shall put on board any vessel not bound directly to some of the *British* dominions, any tools or utensils, or part thereof proper for either the *woollen or silk manufactures*; he shall forfeit the same and 200 l. f. 3.

Tools and utensils carried out of the kingdom.

And any officer of the customs may seize, and secure in some of the king's warehouses, all such tools and utensils as shall be found on board any such vessel; and the same, after condemnation, shall be publicly sold.

4. And if the master or captain shall knowingly permit any the said tools or utensils to be put on board his ship; he shall forfeit 100 l, and if it is a king's ship he shall also forfeit his office, and be incapable of any office under the crown. f. 5.

And if any officer of the customs shall take any entry outward or sign any sufferance for shipping or exporting any the said tools, or knowingly permit the same to be done; he shall forfeit 100 l, and his office, and be incapable of any office under the crown. f. 6.

All which said penalties, on this act shall be half to the king, and half to him that shall prosecute. f. 7.

And by the 14 G. 3. c. 71. If any person shall put on board any vessel not bound directly to some port in *Great Britain or Ireland*, any tools or utensils, or part thereof, proper for the *cotton or linen manufactures*; he shall forfeit the same, and also 200 l. f. 1.

And any officer of the customs may seize and secure in some of the king's warehouses, all such tools and utensils or parts thereof as he shall find in any such vessel; and the same, after condemnation, shall be publicly sold: and half the produce thereof shall be to the king, and half to the officer who shall seize the same. f. 2.

And if the captain or master shall knowingly permit any such tools or utensils to be put on board his ship, he shall forfeit 200 l; and if it is a king's ship, he shall also forfeit his office, and be incapable of any office under the crown. f. 3.

Foreign service.

And if any officer of the customs shall take any entry outward, or sign any sufferance for shipping or exporting any the said tools or utensils, or knowingly permit the same; he shall forfeit 200l, and his office, and be incapacitated. *f. 4.*

And if any person shall have in his possession any such tools or implements proper for the *cotton* or *linen* manufactures, or any tools or implements used in the *woollen* or *silk* manufactures (except stock cards not exceeding 4s a pair, and spinners cards not exceeding 1s 6d a pair, intended to be exported to *North America*, 15 G. 3. c. 5.) and oath shall be made before one justice that there is reason to believe such person hath in his possession such tools or implements, or part thereof, with intent to export the same to some other part or place than *Great Britain* or *Ireland*; such justice shall issue his warrant to seize all such tools or implements and parts thereof; and also to bring the person complained of before him or some other justice: And if he shall not give a satisfactory account to such justice, of the use or purpose to which such tools or utensils are intended to be appropriated, the said justice shall cause the same to be detained, and bind the person so charged, with reasonable sureties, to appear at the next assizes or sessions; and if he shall not give such security, the justice shall commit him to gaol till the next assizes or sessions, and until he shall be delivered by due course of law. And if he shall be there convicted, he shall forfeit 200l. *f. 5.*

All which forfeitures by this act inflicted on offenders shall be applied half to the king, and half to him who shall sue. *f. 6.*

Soldiers inlisting
or going out of
the kingdom.

3. If any subject shall inlist or enter himself, or shall engage to-go beyond the seas or embark with intent to inlist and enter himself, altho' no inlisting money be actually paid to him; or if any person shall procure any subject to inlist or enter himself, or hire or retain any subject, with intent to cause him to inlist or enter himself, or retain, engage, or procure any subject (tho' no inlisting money be paid) to go beyond the seas or embark with intent and in order to be inlisted to serve any foreign prince, state or potentate, as a soldier, without his majesty's leave; he shall be guilty of felony without benefit of clergy. 9 G. 2. c. 30. *f. 1.* 29 G. 2. c. 17. *f. 4.*

And offences committed out of the realm may be tried in any county in *England*. 9 G. 2. c. 30. *f. 2.*

But

But if any person so inlisted, or incited to go beyond the seas in order to be inlisted, as a non-commission officer or private soldier, in any foreign service, shall in fourteen days voluntarily discover upon oath, before any justice or other civil magistrate, the person by whom he was inlisted or enticed, so as he be convicted, he shall be indemnified. *f. 3.*

Forestalling, ingrossing, and regrating.

Forestalling (*forestaellan, or forestallan*) in the English Derivation.]
Saxon signifieth properly to *market before the publick*, or to *prevent the publick market*; and metaphorically, to *intercept in general*: and seemeth derived from *fore*, which is the same as *before*, and *stalle* a standing place or department; from whence sprang the antient word *stallage*, which signifieth money paid for erecting a stall or stand, for the selling of goods in a fair or market:

Ingrossing is from *in*, and *gross*, great or whole:

And *regrating*, from *re*, again, and the *French grater*, to *grate* or *scrape*; and signifieth the scraping or dressing of cloth or other goods, in order for selling the same again.

There have been several statutes made from time to time against these offences in general, and also specially with respect to particular species of goods according to their several circumstances; all of which from the 5 & 6 Ed. 6. c. 14. and others downwards made for enforcing the same, are repealed by the 12 G. 3. c. 71. But these offences still continue punishable upon indictment at the common law by fine and imprisonment.

And at the common law, all endeavours whatsoever to enhance the common price of any merchandize, and all kinds of practices which have an apparent tendency thereto whether by spreading false rumours, or by buying things in a market before the accustomed hour, or by buying and selling again the same thing in the same market, or by any other such like devices, are highly criminal, and punishable by fine and imprisonment. 1 Haw. 234, 5.

By the common law, a merchant bringing victuals into the realm, may sell the same in gross; but no person can lawfully buy within the realm any merchandize in gross,
and

Forestalling, ingrossing, &c.

and sell the same in gross again, without being liable to be indicted for the same. 3 *Inst.* 196.

And the bare ingrossing of a whole commodity, with an intent to sell it at an unreasonable price, is an offence indictable at common law, whether any part thereof be sold by the ingrosser or not. 1 *Haw.* 235.

And so jealous is the common law of all practices of this kind, that it will not suffer corn to be sold in the sheaf; perhaps for this reason, because by such means the market is in effect forestalled. 1 *Haw.* 235.

By the statute of the 5 & 6 *Ed.* 6. c. 14. these offences were particularly described; which statute, altho' now repealed as aforesaid, yet may be of use as containing a parliamentary exposition of the respective terms denoting the several particular offences; And is as follows;

Whosoever shall buy or cause to be bought, any merchandize, victual, or any other thing whatsoever, coming by land or by water toward any market or fair, to be sold in the same, or coming toward any city, port, haven, creek, or road, from any parts beyond the sea to be sold; or make any bargain, contract or promise, for the having or buying the same, or any part thereof so coming as is aforesaid, before the said merchandize, victuals, or other things shall be in the market, fair, city, port, haven, creek or road, ready to be sold; or shall make any motion by word, letter, message, or otherwise, to any person for the enhancing of the price, or dearer selling of any thing abovementioned; or else dissuade, move, or stir any person coming to the market or fair, to abstain or forbear to bring or convey any of the things above rehearsed, to any market, fair, city, port, haven, creek, or road to be sold, as aforesaid,—shall be deemed a forestaller:

Whosoever shall ingross, or get into his hands by buying, contracting, or promise-taking, other than by demise, grant, or lease of land or tythe, any corn growing in the fields, or any other corn or grain, butter, cheese, fish, or other dead victuals whatsoever, to the intent to sell the same again, shall be deemed an unlawful ingrosser:

And whosoever shall by any means regrate, obtain, or get into his hands or possession, in a fair or market, any corn, wine, fish, butter, cheese, candles, tallow, sheep, lambs, calves, swine, pigs, geese, capons, hens, chickens, pigeons, conies, or other dead victual whatsoever, that shall be brought to any fair or market to be sold, and do sell the same again in any fair or market holden or kept in the same place, or in any other fair or market within four miles thereof, shall be deemed a regrater.

Form

Form of an Indictment for forestalling.

Westmorland. **T**HE jurors for our lord the king, upon their oath present, that A. O. late of the parish of — in the county aforesaid, yeoman, on the — day of — in the — year of the reign of — at the parish aforesaid, in the county aforesaid, did buy and cause to be bought of and from one A. S. twenty oxen, for the sum of 200 l of lawful money of Great Britain, as he the said A. S. then and there was driving the said twenty oxen towards the market of M. to sell the said twenty oxen in the said market, and before the said twenty oxen were brought into the said market, where the same should be sold; in contempt of our said lord the king and his laws; to the evil example of all others in the like case offending, and against the peace of our said lord the king, his crown and dignity,

Indictment for ingrossing;

Westmorland. **T**HE jurors for our lord the king upon their oath present, that A. O. late of — in the county aforesaid, yeoman, on the — day of — in the — year of the reign of — at — aforesaid, in the county aforesaid, did ingross and get into his hands, by buying of and from one A. S. 50 quarters of wheat, to the intent to sell the same again; to the evil example of all others in the like case offending, and against the peace of our said lord the king, his crown and dignity.

Indictment for regrating.

Westmorland. **T**HE jurors for our lord the king upon their oath present, that A. O. late of the parish of — in the county aforesaid, yeoman, on the — day of — in the — year of the reign of — at the parish aforesaid, in the county aforesaid, to wit, in a certain market then and there holden, did buy, obtain, and get into his hands and possession ten geese and twenty chickens, of and from one A. S. for the sum of 30 s of lawful money of Great Britain (the said geese and chickens then being brought to the said market by the said A. S. to be sold); and that afterwards, to wit, on the same — day of — in the year aforesaid, he the said A. O. at the parish

Forestalling, ingrossing, &c.

parish aforesaid, in the county aforesaid, in the said market there, unlawfully did regrate the said geese and chickens, and sell the same again to one A. B. for the sum of 40s of like lawful money of Great Britain, in contempt of our said lord the king and his laws, to the evil example of all others in the like case offending, and against the peace of our said lord the king, his crown and dignity.

Forests. See Game.

Forfeiture.

The forfeitures for particular offences may be found under their respective titles; here it is treated of forfeitures in general.

I. Of forfeiture of lands and goods.

II. Of loss of dower.

III. Of corruption of blood.

I. Of forfeiture of lands and goods.

Forfeiture of
lands.

I. IT seems agreed, that by the common law, all lands of inheritance, whereof the offender was seised in his own right, and also all rights of entry to lands in the hands of a wrong doer, are forfeited to the king, by an attainder of high treason, and to the lord of whom they are immediately holden, by an attainder of petit treason or felony. 2 *Haw.* 448.

But it seems clear, that the lord cannot enter into the lands holden of him, upon an escheat for petit treason or felony, without a special grant, till it appear by due process, that the king hath had his prerogative of the year, day, and waste. 2 *Haw.* 448.

Concerning which year, day and waste, it is enacted by the 17 *Ed.* 2. c. 16, that the king shall have the goods of all felons attainted, and fugitives, wheresoever they be found. And if they have freehold, it shall be forthwith taken into the king's hands, and the king shall have all profits of the same by one year and one day; and the land shall

shall be wasted and destroyed in the houses, woods, and gardens, and in all manner of things, belonging to the same land. And after the king hath had the year, day, and waste, the land shall be restored to the chief lord of the fee, unless that he fine before with the king, for the year, day, and waste.

2. As to forfeiture of goods, it seems agreed, that all things whatsoever, which are comprehended under the notion of a personal estate, whether they be in action or possession, which the party hath, or is intitled to, in his own right, and not as executor or administrator to another, are liable to such forfeiture, in the following cases:

(1) Upon a conviction of treason or felony. *2 Haw.* 450.

(2) Upon a flight found before the coroner, upon view of a dead body. *id.*

(3) Upon an acquittal of a capital felony, if the party is found to have fled. *id.*

(4) Also a person indicted of petit larceny, and acquitted, yet if it be found he fled for it, forfeits his goods, as in case of grand larceny. *1 H. H. 530. 2 Haw. 451.*

But it is certain that the party may in all cases, except that of the coroner's inquest, traverse the finding of the flight. Also it seems agreed, that the particulars of the goods found to be forfeited may be also traversed. *2 Haw. 451.*

(5) Upon a presentment by the oaths of 12 men that a person arrested for treason or felony, fled from, or resisted those who had him in custody, and was killed by them in the pursuit or scuffle. *2 Haw. 451.*

(6) By being waived or left by a felon in his flight, whereby he forfeits the goods so waived, whether they be his own, or the goods of others stolen by him, which shall not be restored to the right owners but upon a proper prosecution. *2 Haw. 451.*

(7) Also, a convict within clergy, forfeits all his goods, tho' he be burnt in the hand; yet thereby he becomes capable of purchasing other goods. *2 H. H. 388, 389.*

But on burning in the hand, he ought to be immediately restored to the possession of his lands. *2 H. H. 389.*

3. Upon outlawry in treason or felony, the offender shall lose and forfeit as much as if he had appeared; and judgment had been given against him, as long as the outlawry is in force. *Wood. b. 4. c. 5.*

And those that tarry till the exigent, in treason, felony, or petit larceny, forfeit their goods, though they render themselves

themselves to justice, and are acquitted; for it was a flight in law. *Wood. b. 4. c. 5.*

Forfeiture in se
defendendo.

4. But where the killing a man in his own defence is in the law no felony, there is no forfeiture, unless he fled; for that is a distinct forfeiture, although the party be not guilty of the fact. 1 *H. H.* 493.

To what time
the forfeiture
shall relate.

5. It seems agreed, that the forfeiture, upon an attainder either of treason or felony, shall have relation to the time of the offence, for the avoiding of all subsequent alienations of the land; but to the time of the conviction or flight found only, as to *chattels*; unless the party were killed in flying or resisting, in which case it is said, that the forfeiture of the chattels shall relate to the time of the offence. 2 *Haw.* 454.

What is to be
done with the
felon's goods be-
fore forfeiture.

6. But though the goods of an offender be not forfeited, till the conviction, or flight found by inquest, yet whether they may be seized upon the offence committed, hath been controverted; concerning which lord *Hale* saith thus:

It seemeth clear, that at the common law, if a man had committed felony or treason, or tho' possibly he had committed none, yet if he had been indicted, the sheriff, coroner, or other officer, could not seize and carry away the goods of the offender or party accused:

Again, he could not in that case have removed the goods out of the custody of the offender or party accused, and deliver them over to the constables or to the *villata*, to answer for them:

But if the party were indicted, the sheriff or other officer might make a simple seizure of them only to inventory and appraise them, and leave them to the custody of the servants or bailiff of the party indicted, in case he would give security against their being imbezilled, or in default thereof he might deliver them to the constable or vill to be answerable for them, but yet so that the party accused and his family have sufficient out of them for their livelihood and maintenance:

And possibly the same law was, tho' he were not indicted, but *de facto* had committed a felony, but with this difference, if he had been indicted, this kind of seizure might have been made, whether he committed the felony or not:

But in case there were no indictment, then it is at the peril of him that seizeth, if he committed not the felony:

And then as to the statute of 1 *R.* 3. c. 3. it is as follows; *No sheriff or other person shall take or seize the goods of any person arrested or imprisoned for suspicion of felony, before*

before he be convicted or attainted, or before the goods be otherwise forfeited; on pain of double value to the party grieved:

Mr. Stamford thinks this is but in affirmance of the common law, only that it gives a penalty: but it seems to be somewhat more than so, for this prohibits the seizure of the goods of a party imprisoned, tho' he were also indicted, but not yet convicted, where unquestionably the common law allowed such a seizure, if the party or his friends did not secure the forthcoming of the goods, where the party was indicted:

But upon this statute these things are considerable;
1. As to persons at large, it seems to me (says he) that if they fly not, there can be no seizure at all made, whether they are indicted or not; for the statute did not intend a greater privilege to a party imprisoned, than to him that is at large. 2. That if he be at large, and fly for it, yet his goods cannot be seized and removed, whether he be indicted or not indicted. 3. That if he be indicted, and at large, yet the goods cannot be removed, but only viewed, appraised, and inventoried, in the house or place where they lie:

And yet I know not how it comes to pass, says he, the use of seizing the goods of persons accused of felony, tho' imprisoned or not imprisoned, hath so far obtained notwithstanding this statute, that it passeth for law and common practice, as well by constables, sheriffs, and other the king's officers, as by lords of franchises, that there is nothing more usual:

Upon the whole, he says, that the opinion of my lord Coke, in his 3 *Inst.* 228. hath truly stated the law, at least, as it stands upon the statute of 1 R. 3. viz. 1. That *before* the indictment, the goods of any person cannot be searched, inventoried, or in any sort seized. 2. That *after* the indictment, they cannot be seized and removed, or taken away, before conviction or attainder:

But then it may be said, to what purpose may they be searched and inventoried after indictment, if they may not be removed, but are equally liable to imbezilling as before:

I think (he says) he is not bound to find sureties, neither hath the officer at this day any power to remove them in default of sureties, and commit them to the vill, but only to inventory them, and leave them where he found them (unless in case of a second *capias* on the 25 *Ed.* 3. c. 14.) for the prisoner or party indicted may sell them *bona fide*; and if he may do so, the vendee may take them, and the *villata* cannot refuse the delivering of them to the vendee, tho' the goods had been delivered to them:

But

Forfeiture.

But there is this advantage by the viewing and appraising, that thereby the king is ascertained what the goods are, and may pursue them that take or imbezil them, by information (if the party happen to be convicted) and try the property with them, whether they are really sold, or sold only fraudulently without valuable consideration, to prevent the forfeiture. 1 *H. H.* 363, 4, 5, 6, 7.

II. Of loss of dower.

Forfeiture of
dower in felony.

In treason.

1. Albeit a person shall be attainted of felony, yet his wife shall not forfeit her dower. 1 *Ed. 6. c. 12. f. 17.*
2. But on his attainder of treason, she shall forfeit her dower. 5 & 6 *Ed. 6. c. 11. f. 13.* But in some kinds of treason (particularly with regard to the coin) there is a special saving of the wife's dower by statute.

III. Of corruption of blood.

Corruption of
blood.

1. It is agreed, that by an attainder of treason or felony, the blood is so far stained or corrupted, that the party loses all the nobility or gentility he might have had before, and becomes ignoble. 2 *Haw.* 456.
2. Also, that he can neither inherit as heir to an ancestor, nor have an heir. 2 *Haw.* 456.
3. But the king's pardon, tho' it doth not restore the blood, yet as to issues born after, hath the effect of a restitution. 1 *H. H.* 358.
4. But restitution of blood in its true nature and extent, can only be by act of parliament. 1 *H. H.* 358. 2 *Haw.* 458.

Forgery.

1. **F**ORGERY is an offence at common law, and an offence also by statute.

2. Forgery at the common law, is an offence in falsely and fraudulently making or altering any manner of record, or any other authentic matter of a publick nature; as a parish register, or any deed, will, privy seal, certificate of holy orders, protection of a parliament man, and the like.

1 *Haw.* 182, 184.

As for writings of an inferior nature, as private letters, and such like, the counterfeiting of them is not properly forgery; therefore in some cases it may be more safe to prosecute such offenders for a misdemeanor, as cheats. For by reason of the uncertainty of opinions, concerning proper forgeries at common law, indictments are generally brought upon some of the following statutes, and very few at common law. But if the indictment is at common law and the offender is convicted, he may be pilloried, fined, and imprisoned. *Wood. b. 3. c. 3. 1 Haw. 184.*

But as to the power of justices of the peace in this matter, Mr. *Hawkins* says, it hath been settled of late, that they have no jurisdiction over forgery at the common law; the principal reason of which resolution (he says) as he apprehended, was, that inasmuch as the chief end of the institution of the office of these justices was for the preservation of the peace against personal wrongs and open violence, and the word *trespass* in its most proper and natural sense, is taken for such kind of injuries, it shall be understood in that sense only in the commission, or at the most to extend to such other offences only as have a direct and immediate tendency to cause such breaches of the peace, as libels, and such like, which on this account have been adjudged indictable before justices of the peace. *Haw. 40. 1 Salk. 406.*

But Mr. *Barlow* says nevertheless, that it seemeth clear, that a justice of the peace may take an information thereof, bind over the informers, examine the offender, certify his examination to the proper judges, and commit him to prison in order to abide his trial. *Barl. 244.*

3. The statutes that make forgery an offence are these that follow:

The first is that famous statute of the 5 *El. c. 14.* which by an example worthy to be imitated, doth (in order to prevent confusion) repeal all former statutes against forgery. By this it is enacted, that if any person upon his own head and imagination, or by false conspiracy and fraud with others, shall wittingly, subtilly, and falsely forge or make, or subtilly cause, or wittingly assent to be forged or made, any false deed, charter, or writing sealed, court roll, or the will of any person in writing, to the intent that the estate of freehold, or inheritance of any person, of any lands, tenements, or hereditaments, freehold or copyhold, or the right, title, or interest of any person in the same may be molested, troubled, defeated, recovered, or charged; or shall pronounce, publish, or shew forth in evidence the same as true, knowing the same to be false

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and forged, to the intent as above (except lawyers or attornies for their clients, not being privy to the forgery); and shall be thereof convicted, either upon action at the suit of the party, or otherwise according to the order and due course of the laws of the realm,——he shall pay to the party double costs and damages, and be set upon the pillory in some open market town or other open place, and have both his ears cut off, and his nostrils slit and seared with a hot iron, and shall forfeit the profits of his lands during life, and be imprisoned also during life. s. 2.

And all justices of oyer and terminer, and justices of assize, shall have power to inquire of, hear, and determine all offences in this act. s. 10.

Upon his own head] When the proceedings were in latin, *super proprium suum caput* was allowed to be good upon an indictment on this statute; the law having more regard that the statute be strictly pursued, than rendered into proper latin. 1 Haw. 187.

Forge or make] Making a second deed, and antedating it, with intent to make it take place of a former deed, is forgery within this statute. 3 Inst. 167.

Or subtilly cause, or willingly assent] To *cause*, is to procure or counsel one to forge; to *assent*, is to give his assent or agreement afterwards, to the procurement or counsel of another; to *consent*, is to agree at the time of the procurement of counsel, and such is in law a procurer. 3 Inst. 169.

But lord Hale says, that an *assent* after the fact is committed, makes not the party assenting guilty or principal in the forging; but it must be a precedent, or concomitant assent. 1 H. H. 684.

False deed, charter, or writing] It seems to be no way material, whether a forged instrument be made in such a manner, that if it were in truth such as it is counterfeited for, it would be of validity or not; and upon this ground it hath been adjudged, that the forgery of a protection in the name of a member of parliament, who in truth at the time was not a member, is as much a crime as if he were. 1 Haw. 184.

Writing sealed] These are large words; and the making of a false customary of a manor in writing under seal containing divers false customs, to the disherison of the lord of the manor, and that the same had been allowed and permitted by the lord of the manor, which was allowed

false, was resolved to be within these words *a false writing sealed.* 3 *Inst.* 171.

Sealed] It is required that the deed, charter, or writing must be sealed, that is, have some impresson upon the wax; or wax, without an impresson is not a seal. 3 *Inst.* 169.

Court roll, or will] Here are two writings which need not be sealed, because they may take effect without any seal, for that they be no deeds; and no writing can have the force of a deed without a seal. 3 *Inst.* 170.

Will] If any person which writeth the will of a sick man, inserteth a clause therein concerning the devise of lands, without any direction of the devisor, this is forgery, altho' he did not forge the whole will. 3 *Inst.* 170.

To the intent that the estate of freehold or inheritance of any person, of any lands, tenements, or hereditaments, freehold or copyhold, or the right, title, or interest of any person in the same may be molested, troubled, defeated, recovered, or charged] E. 4 G. 2. K. and *Japhet Crooke*. The defendant was convicted on this statute for forging a lease and release. And the indictment sets forth, that *Garbut* and his wife were seised in fee of certain messuages, lands, and tenements called *Jawick* in the parish of *Clackton* in *Essex*, and that the defendant intending to molest them and their interest in the premisses, forged a lease and release as from *Garbut* and his wife, whereby they are supposed for a valuable consideration to convey to him "all that park called *Jawick* park in the parish of *Clackton* in *Essex*, containing eight miles in circumference, with all the deer, woods, &c. thereto belonging." It was moved in arrest of judgment, that the premisses supposed to be conveyed, were so materially different from those which were really the estate of *Garbut* and his wife, which was houses, lands, and tenements; that it was impossible this conveyance ever could molest or disturb them: if it was a true deed, it could not pass their lands at law, for want of proper description; and though where lands are improperly described, a court of equity will oblige the vendor to convey them by proper words, yet that is only where there is a previous contract for a sale, and they do it as carrying that contract into execution. The court for several terms inclined strongly with the objection; but this term *Raymond Ch. J.* declared that they were all of opinion to over-rule it: for by the words of the act, it is not necessary that there should be a charge or a possibility

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of a charge: It is sufficient that it be done with that intent, and the jury have found that it was done with intent to molest *Garbut* and his wife in the possession of their lands. Accordingly judgment was given for the king, and the defendant had sentence to undergo the punishment appointed by the act for forging a deed, and the same was executed upon him at Charing-cross. *Str.* 901.

Pronounce or publish] That is, when one by words or writing pronounceth or publisheth the deed to any other as true. *3 Inst.* 171.

Knowing the same to be forged] This knowledge may come by two means; either of his own knowledge, or of the relation of another; for if another tell him it is forged, and he publish it afterwards as true, and it prove to be forged indeed, he is in danger of this statute. *3 Inst.* 171. *1 Haw.* 187.

But lord *Hale* says, that tho' such a relation may be an evidence of fact to prove his knowledge, yet it is not conclusive; for perchance there might be circumstances of fact, that might make the person relating it, or his relation, not credible: so that the *knowing* must be upon the whole matter left to the jury, upon the circumstances of the case. *1 H. H.* 685.

Justices of oyer and terminer] Albeit justices of the peace, by their commission, have power to hear and determine felonies and trespasses, yet they are not included under the name of justices of oyer and terminer; for justices of oyer and terminer are known by one distinct name, and justices of the peace by another. *3 Inst.* 103.

And by the same statute it is further enacted, that if any person, upon his own head or imagination, or by false conspiracy or fraud with any other, shall wittingly, subtilly, and falsely forge or make, or cause or assent to be made and forged any false charter, deed or writing, to the intent that any person may have or claim any estate or interest for term of years in any manors, lands, tenements, or hereditaments, not being copyhold, or any annuity in fee-simple, fee-tail, or for term of life, lives, or years; or any obligation, or bill obligatory, or any acquittance, release, or other discharge of any debt, account, action, suit, demand, or other thing personal; or shall pronounce, publish, or give the same in evidence as true, knowing the same to be false and forged; he shall, on conviction in like manner, pay to the party double costs and damages, and be set on the pillory, and have one of his ears cut off, and be imprisoned for a year. *f.* 3.

Obligatio

Obligation or bill obligatory] The forgery of a deed of gift of mere personal chattels, is not within this statute. *Haw. 186.*

And if after verdict, the plaintiff shall release the judgment or execution, or suffer a discontinuance, it shall only discharge his own costs and damages, and not the other punishment. *f. 6.*

And by the same statute it is further enacted, that if any person shall after conviction offend again in any of the ways abovementioned, he shall be guilty of felony without benefit of clergy. *f. 7, 8.*

4. Thus stood the matter upon the statute of 5 *El.* Afterwards by many subsequent statutes (several of which were occasional only, and adapted to the particular juncture and circumstances of the time in which they were made, but which are referred to and enforced by the subsequent statutes on the same subject) divers other forgeries were made felony without benefit of clergy for the first offence; and others had other punishments assigned them: Such are these that follow:

It shall be felony without benefit of clergy, to forge or counterfeit.

(1) Any bank bills, or notes, or the seal of the governor and company of the bank of *England. 7 & 8 W. c. 31. f. 36. 8 & 9 W. c. 20. f. 36. 11 G. c. 9. f. 6. 12 G. c. 32. f. 9.*

And in general, any bank note, bank bill of exchange, dividend warrant, or any bond or obligation under the seal of the bank, or indorsement thereon; or knowingly offering to dispose thereof. *15 G. 2. c. 13. f. 12.*

(2) *India bonds. 12 G. c. 32. f. 9.*

(3) Bonds, receipts, warrants, or seal of the South-sea company. *9 An. c. 21. f. 57. 6 G. c. 4. f. 56. 6 G. c. 11. f. 50. 12 G. c. 32. f. 9.*

(4) Exchequer bills; by the several acts which direct the issuing the same.

(5) Any power to transfer stocks. *8 G. c. 22. f. 1.* or personating the owners thereof. *4 G. 3. c. 25.*

(6) Lottery tickets and orders: by the several lottery acts.

(7) Policy of assurance. *6 G. c. 18. f. 13.*

(8) Mediterranean passes. *4 G. 2. c. 18.*

(9) Army debentures. *5 G. c. 14. f. 10.*

(10) Marriage licence or registry of a marriage. *26 G. 2. c. 33.*

(11) Stamps on vellum, parchment, and paper, by the several stamp acts.

Forgery.

(12) Stamps on linen imported. 10 *An. c.* 19. *f.* 97. And selling it knowingly with a counterfeit stamp; 100*l.* and the pillory. *id.*

And by the 9 & 10 *W. c.* 41. Forgers of seamens wills, or letters of attorney, shall over and above the penalties by former laws, forfeit 200*l.* with costs; half to the king, and half to him that will sue. *f.* 3.

5. And besides these (and other like) particular laws, in the 2 *G. 2.* a general law was made (for five years, and was afterwards revived and made perpetual), by which it is enacted, that if any person shall falsely make, forge, or counterfeit, or cause or procure the same to be done, or willingly aid or assist in the false making, forging, or counterfeiting any deed, will, bond, writing obligatory, bill of exchange, promissory note, indorsement or assignment of any bill of exchange or promissory note, acquittance or receipt for money or goods, with intent to defraud any person; or shall utter or publish the same as true, knowing the same to be forged;—he shall be guilty of felony without benefit of clergy; but not to work corruption of blood, or disherison of heirs. 2 *G. 2. c.* 25. *f.* 1, 5.

6. And by the 7 *G. 2. c.* 22. It is further enacted, by way of addition to the foregoing, that if any person shall falsely make, alter, forge, or counterfeit, or willingly aid or assist in the false making, altering, forging, or counterfeiting any acceptance of any bill of exchange, or the number or principal sum of any accountable receipt for any note, bill, or other security for payment of money, or any warrant or order for payment of money or delivery of goods, with intent to defraud any person; or shall utter or publish the same as true, with intent to defraud any person, knowing the same to be false;—he shall be guilty of felony without benefit of clergy: And this without any saving of the corruption of blood, or disherison of heirs.

Warrant or order for payment of money or delivery of goods
In the case of *Mary Mitchell*, on this order,

“ Mr. Jefferys.

O^ct. 16. 1753.

“ I desire you to let this woman have six yards of ordinary stuff, one pair of stockings, one shift, one apron,
“ one handkerchief, and I will see it all paid for. Witness
“ my hand, *George May* :”

Upon a conference among the judges, nine of them were of opinion, that this writing is not a warrant or order for the delivery of goods within the meaning of the act: That the words *warrant* or *order* do import, that the person giving such warrant or order hath or at least claimeth an interest

interest in the money or goods which are the subject matter of that warrant or order; that he hath or at least assumeth a disposing power over such money or goods; and taketh upon him to transfer the property, or custody of them at least, to the person in whose favour such warrant or order is made: And tho' the present case, and many others of the like kind, may come within the mischiefs intended to be prevented by the act, yet in the construction of acts so penal as this, the old rule of adhering strictly to the letter must not be departed from. And the prisoner was discharged from the indictment which was brought against her for forging this order. *Fost. 119.*

Fornication. See **Lewdness.**

Frame work knitters.

1. **A**LL frame work knitted pieces and stockings, made of thread, cotton, worked, or yarn, or of any mixture therewith, or of any other materials (except such as shall be made of silk only), which shall contain 3 or more threads, shall be marked with the same number of illet-holes, and no more, as there are threads contained in each piece or pair; and such illet-holes shall be made distinctly in one direct line, or in the same course, and shall not exceed the distance of three inches from the two extreme illet-holes; and no such illet-holes shall be made within the distance of 4 inches of any letter, figure, mark, or other device, which shall be put or woven in any such goods or manufactures; and all such illet-holes shall be made within 4 inches of the top or end of every such piece or pair; and no illet-hole, or imitation thereof, shall be made in any frame work knitted piece or pair of stockings, upon any account whatsoever, except as herein before directed. 6 G. 3. c. 29. s. 1.

Provided, that nothing herein shall extend to prevent any manufacturers from using remnants, or materials of any sort, in the welt and tops of stockings only, at any distance not exceeding 3 inches from the top, altho' the same shall not contain so great a number of threads as are contained in the legs of such stockings. s. 2.

2. And if any master frame work knitter, or master hosier, or any other person, shall make or work, or cause

Frame work knitters.

or procure to be made or wrought, any frame work knitted goods, of any the materials aforesaid or any mixture thereof (except such as shall be made of silk only), without being so marked; he shall forfeit the same, and also 5 l for each piece or pair of stockings. *f. 3.*

Provided, that the said penalty of 5 l shall not extend to any journeyman, apprentice, servant, or person not making such goods on his own account: But such person offending herein shall forfeit not exceeding 40 s, nor less than 5 s; unless he can prove that the goods by him unduly marked were so marked by direction of his master or person by whom he was employed, in which case he shall not be subject to any penalty. *f. 4, 5, 6.*

3. And if any frame work knitter, hosier, or other person, shall sell or expose to sale, any of the said goods, not so marked as aforesaid; he shall forfeit the same, and also 5 l for each piece or pair. *f. 7.*

Provided, that if the person selling or exposing the same to sale, shall discover the vender or seller thereof, so as he may be convicted; such person shall be discharged. *f. 8.*

4. And one justice where the offence shall be committed (not being a frame work knitter, hosier, or proprietor of frames) may convict the offender, on the oath of one witness: And if the penalties or forfeitures shall not be forthwith paid, the said justice shall issue his warrant to levy the same by distress; and if no goods or not sufficient, can be found, such justice shall, on oath made to him by the person who shall have the execution of the warrant, commit the offender to the common gaol of the place where the offence was committed, for any time not exceeding 3 months, unless the penalties and forfeitures shall be sooner paid and satisfied. All which penalties and forfeitures shall be applied, half to the informer, and half to the poor. *f. 9.*

5. Persons aggrieved may appeal to the sessions, giving 10 days notice to the justice; and within 2 days after notice, entering into recognizance before a justice, with two sureties, to try the appeal at such sessions: And the justices there, on due proof of such notice and recognizance, shall hear and determine the same, and may award costs to either party; and their determination shall be final, binding, and conclusive, to all intents and purposes. *f. 10.*

6. Provided, that nothing herein shall extend to abridge or take away any rights or privileges, of the master, wardens,

Frame work knitters:

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men, and assistants, of the company of frame work knitters. *f. 12.*

Fraud. See **Cheat.**

Fruit and fruit trees. See **Wood.**

Fuel.

BY the 43 *El. c. 14.* All faggots to be sold shall contain in compass, besides the knot of the bond, 24 inches of assize; and every faggot stick within the bond, shall contain full three foot of assize, except only one stick to be but one foot long, to stop or harden the binding.

By the 9 *An. c. 15. f. 1.* All billets (except those made of beech, 10 *An. c. 6.*) that lie exposed in publick places where they are usually bought or sold, shall be assized, and cut or marked in manner following; that is to say,

All billets of what scantling or denomination soever, shall contain in length three foot and four inches, and be of the following dimensions; *viz.*

Names of the Round billets.		Half round		Quarter cleft		
	in. qr.	in. qr.	in. qr.	in. qr.		
A single	7	2	0	0	0	No notch.
A cast	10	2	12	1	12	0 One notch.
A trois	13	0	15	0	14	3 Three in the middle.
cast	15	0	17	1	17	c. Two notches.
3 cast	18	1	21	1	21	0 { One at each end, and one in the middle.
4 cast	21	1	24	2	24	0 4 notches.
5 cast	23	3	27	2	27	0 5 notches.
6 cast	26	0	30	0	29	2 6 notches.
7 cast	28	0	32	2	32	0 7 notches.
8 cast	30	0	34	3	34	0 8 notches.
9 cast	31	3	36	3	36	1 9 notches.
10 cast	33	2	38	3	38	0 10 notches.
11 cast	35	1				11 notches.
12 cast	36	3				12 notches.
13 cast	38	1				13 notches.
14 cast	39	3				14 notches.
15 cast	41	0				15 notches.
16 cast	42	2				16 notches.
17 cast	43	3				17 notches.
18 cast	45	0				18 notches.
19 cast	46	1				19 notches.
20 cast	47	2				20 notches.

And

And if they shall not be thus assized and marked, then on information to a justice of the peace, mayor, or other head officer, he shall call before him six good and lawful men of the town, and shall swear them truly to inquire and present, whether the same be of good and sufficient assize; and if they shall present that any of them is not sufficient, the same so being deficient shall be forfeited, and be delivered to the overseers, to be by them distributed to the poor. *id. f. 2.*

And by the 43 *El. c. 14.* The billets shall be measured within six inches of the midst; and the surplussage which shall happen between any two next measures, being above the one, and under the other, shall be taken for the benefit of the buyer.

Fuller's earth. See **Woollen Manufacture.**
Furze. Burning it in forests. See **Burning.**

Game.

THE statutes relating to this title are very numerous, and the sense sometimes a little perplexed, so that perhaps upon a view of the whole, it may seem, that about four or five new acts, comprehending the several heads here undermentioned, and repealing all the preceding ones, would conduce to render this branch of our laws more intelligible and useful.

After having first premised (in order to avoid frequent repetitions throughout this whole title) that it is enacted by the statute of the 8 *G. c. 19.* that where any person for any offence against any law in being at the making of the said act, for the better preservation of the game, shall be liable to pay any pecuniary penalty or sum of money, on conviction before a justice of the peace, the prosecutor may either proceed to recover the same in such manner, or he may sue for the same (before the end of the second term after the offence committed, 26 *G. 2. c. 2.*) by action of debt, or on the case, bill, plaint, or information, in any court of record at *Westminster*, wherein if he recovers he shall have double costs: Provided, that the offender shall not be prosecuted both ways; and in case of a second prosecution, he may plead in his defence the former

former prosecution pending, or the conviction or judgment thereupon had. And by the 2 G. 3. c. 19. whereas a moiety of the said penalty by several acts is directed to be applied to the use of the poor of the parish where the offence was committed, by reason whereof inhabitants of the said parish have been disallowed to give evidence; it is enacted, that it shall be lawful for any person to sue for the whole of such penalty to his own use, and if he recovers he shall have double costs; such action to be brought within six months after the offence committed: (This being premised) I will treat of this subject under the following heads:

- I. Origin of the distinct property in game.
- II. Certain observations concerning forests, chases, parks, and warrens.
- III. Concerning gamekeepers.
- IV. Qualification by estate or degree to kill game: with the punishment of persons unqualified.
- V. Laws for preserving the four footed game in particular.
- VI. Laws for preserving the winged game in particular.
- VII. Laws for preserving the game of fish in particular.

Under which three last heads are comprehended those restrictions which seem to concern all persons whatsoever, whether qualified or not: for altho' a man be qualified to kill game, yet he must kill it in a lawful manner, and not in such ways as tend utterly to destroy it.

I. Origin of the distinct property in game.

Before we take notice of the statutes made for the preservation of the game, it may be requisite to observe how the common law stood herein; which depends upon the difference made between tame and wild animals.

The tame animals, such as horses, cows, sheep, and the like, are such creatures, as by reason of their sluggishness and unaptness for motion, do not fly the dominion

nion of mankind, but generally keep within the same pastures and limits, and may be easily pursued and overtaken, if by accident they should escape; and therefore the owner hath the same kind of property in them, as he hath in all inanimate chattels, and for the violation thereof may bring an action of trespass.

The wild animals, such as deer, hares, foxes, and such like, are those, which by reason of their swiftness or fierceness fly the dominion of man; and in these, no person can have a property, unless they be tamed or reclaimed by him. And as property is the power that a man hath over any other thing for his own use, and the ability that he hath to apply it to the sustentation of his being; when that power ceaseth, his property is lost; and by consequence an animal of this kind, which after any seizure escapes into the wild common of nature, and asserts its own liberty by its swiftness, is no more mine than any creature in the *Indies*, because I have it no longer in my power or disposal.

Hence it appears, that by the common law, every man had an equal right to such creatures as were not naturally under the power of man; and that the mere caption or seizure created a property in them.

By immediate taking and killing them, they belong to such person in the same manner as any other chattels, and cannot be taken from him; since the first seizure and caption was sufficient to vest the property of them in him.

Also by taking and taming them, they belong to the owner, as do the other tame animals, so long as they continue in this condition, that is, as long as they can be considered to have the mind of returning to their masters; for while they appear to be in this state, they are plainly the owner's, and ought not to be violated; but when they forsake the houses and habitations of men, and betake themselves to the woods, they are then the property of any man.

Another way of gaining property in them is, by inclosure; and then the beasts must be understood to be mine, as the profits of the soil it self are; and they can no more be taken and carried off, than any other profits of the land: and therefore if deer be inclosed in a park or paddock, or conies in a field or warren, they become so much a man's own, that no one ought to kill or take them away. And since in this case it is the inclosure that retains them (for take away the inclosure, and they are

in their natural liberty); therefore the party is said to have right as he hath to any other profits there inclosed, and a distinct and independent right in every animal.

It is a maxim of the common law, that such goods of which no one can claim any property do belong to the king by his prerogative; and hence all those animals *feræ naturæ*, which come under the denomination of *game*, are styled in our laws *his majesty's game*: and that which he hath, he may grant to another; and consequently another may prescribe to have the same, within such a precinct or lordship. And from hence cometh the right of lords of manors, or others, unto the game within their respective liberties.

And upon this foundation the several acts of parliament are established, for the preservation of these species of animals; for the recreation and amusement of persons of fortune, unto whom the king with the advice and assent of parliament hath granted the same; and to prevent persons of inferior rank, from squandering that time, which their station of life requireth to be more profitably employed. For these restrictions do not take from the common people any right which they ever had; but only grant unto some persons those privileges which before rested solely in the king. 2 *Bac. Abr.* 612, 613.

II. Certain observations concerning forests, chases, parks, and warrens.

1. A *forest* is a certain territory of woody grounds, Forest, what. and fruitful pastures, privileged for wild beasts and fowls of forest, chase, and warren, to rest and abide there in the safe protection of the king, for his delight and pleasure: which territory of ground so privileged is meered and bounded with unremoveable marks, meers, and boundaries, either known by matter of record, or by prescription; and also replenished with wild beasts of venary or chase, and with great coverts of vert for the succour of the said beasts there to abide: for the preservation and continuance of which, there are particular officers, laws, and privileges belonging to the same, requisite for that purpose, and proper only to a forest, and to no other place. *Manw.* 40.

Note; That *vert* comprehends every thing which bears green leaves in the forest. *Manw.* 51.

And

And the lord having the wood in the tenant's land, which is still customary in many manors, was originally for preservation of the vert, for the sustentation of the lord's game there.

Beasts of forest.

2. Beasts of forest are properly hart, hind, buck, hare, boar and wolf; but legally all wild beasts of venary. 1 Inst. 233.

Purlieu, what.

3. *Purlieu* comes from the French, *pur*, clear, entire, and exempt; and *lieu*, a place: that is, a place, entire, clear, or exempt from the forest: and signifies those grounds which *Henry the second*, *Richard the first*, or king *John* added to their ancient forests, over other mens grounds; and were disafforested by the statute of *charta de foresta*. 4 Inst. 303. Manw. 318.

But nevertheless the *purlieu* as to some purposes is forest still, and is disafforested as to the particular owners of the land and for their benefit, and not generally to give liberty to any man to hunt the wild beasts, and spoil the vert. And if those beasts do escape out of the forest into the *purlieu*, the king hath a property in them still against any man, but against the owners of the woods and lands in which they are; and such owners have a special property in them *ratione loci*, but yet so that they hunt them fairly, and not forestall them in their return towards the forest. Manw. 366.

But a *purlieu* man may not hunt in every man's lands within the *purlieu*, but in his own lands only; and therefore if he find the beasts of the forest in his woods or lands in the *purlieu*, in such case he hath a property in them against any other man *ratione soli* (the king only excepted.) And if he begins the hunting in his own lands, then by reason of that property he may pursue his hunting thro' any man's woods or lands, so as he doth not enter into any forest, chase, park, or warren. And if he kill the beast in another man's land, and out of such privileged place, he may take and carry away the same by reason of the first property. But if the beast recover the forest, he must call back his dogs, for they are then the king's wild beasts again. And if he do not call back and rebuke his dogs, and they kill the beast in the forest, he is a trespasser, tho' himself never came within the bounds thereof. But if in hunting towards the forest, the dogs fasten on it before it is within the bounds thereof, and the dogs still hanging on are drawn by the deer into the forest, and it is killed there, then by reason of the first property which he had *ratione soli*, and also by the pur-

suit and possession thereof before it entred the forest, he may lawfully enter and take it. *Manw.* 373.

4. A *chafe* (from *chasser*, to chase) is a privileged place Chafe, what, for receipt of deer and beasts of the forest, and is of a middle nature betwixt a forest and park. It is commonly less than a forest, and not endowed with so many liberties, as officers, laws, courts; and yet is of a larger compass than a park, having more officers and game than a park. Every forest is a chafe, but every chafe is not a forest. It differeth from a park in that it is not inclosed; for if it is inclosed, it is a good cause of forfeiture; tho' it must have certain metes and bounds, but it may be in other mens grounds as well as in one's own. *Read.* Game.

Manw. 49.

5. Beasts of chafe are the buck, doe, fox, martern, and Beasts of chafe. *Manw.* 44.

6. A *park* (from the French, *parquer*, to inclose) is a Park, what, large parcel of ground privileged for wild beasts of chafe by the king's grant, or by prescription. *Read.* Game.

7. The beasts of park properly extend to the buck, Beasts of park, doe, fox; but in a common and legal sense to all the beasts of the forest. *Read.* Game.

8. A park must be inclosed; for if it lies open, it is a Park to be inclosed. good cause of seizure into the king's hands, as a thing forfeited: and the owner cannot have an action against those that hunt in his park, if it lies open. *Read.* Game.

9. Deer in a park shall go to the heir, and not to the Deer shall go to the heir, executor. *1 Inst.* 8.

10. A *warren* is a place privileged by prescription or Warren, what, grant of the king, for the preservation of the beasts and fowl of the warren; viz. hares, conies, partridges, and pheasants. *Manw.* 44.

11. A free warren may lie open, there being no necessity of inclosing it. *Read.* Game. Need not to be inclosed.

12. Conies in a warren (as hath been said before of deer in the park) shall go to the heir, and not to the executor. *1 Inst.* 8. Conies shall go to the heir.

13. It is not lawful for any person to make any chafe, Licence to erect, park, or warren, in his own freehold or elsewhere, to keep in it any wild beasts, or birds of forest, chafe, park, or warren, without the king's grant or warrant so to do; and if any man do, he is to be punished in a *Quo warranto*, and the franchise to be seized into the king's hands. *Manw.* 56.

M. 12 G. K. and Sir William Lowther. It was moved for leave to file an information in nature of a *quo warranto*, against Sir William Lowther, to shew by what authority he had made and set up a warren. But it was denied by the court; because it was of a private nature, and therefore proper to be prosecuted only in the name of the attorney general by information, if his majesty thought fit. And the like motion had been denied before in the case of the Lord Lisburn. L. Raym. 1409. Stra. 637.

Which of these
is the highest
franchise.

14. A forest is the highest franchise of princely pleasure; the next to that is a free chase; a chase in one degree is the same as a park, only a park is inclosed, and a chase is always open; the next in degree to a free chase, is a park; and next unto a park, is the franchise of a free warren. And a forest comprehends in it a chase, park, and warren. And for that cause, the beasts of chase, and the beasts and fowls of a warren, are privileged within a forest, as well as the beasts of the forest are. *Manw. 52.*

Common in a
chase.

15. A person may have common in a chase, as well as in a forest; but a forest is governed by the forest law, and a chase and park by the common law. 4 *Inst.* 314. *Manw. 52.*

Trespass in
what case.

16. If I find a pheasant in my lands, and I let my hawk fly, I may follow the flight into another man's land, by reason of the first property which I had in the pheasant *ratione soli*; and if my hawk kill the pheasant in another man's land, I may enter and take it, by reason of that property and pursuit; and in that case, I shall not be punished as a trespasser for taking and carrying away the pheasant, but only for entering the ground. But if the pheasant fly into a warren (which is a privileged place for birds of warren) and the hawk kill it there, the falconer shall not have the pheasant, but the owner of the warren. And the law is the same, in the cases of all wild beasts of the forest and chase. *Manw. 389.*

No trespass in
following beasts
of prey.

17. Notwithstanding the common law allows of the hunting of foxes and badgers, being beasts of prey, in another man's ground, because the destroying of them is looked upon as a public benefit; yet the digging and breaking the ground to unearth them is held to be unlawful, and the owner of the ground may maintain an action of trespass in that case. *Cro. Jac. 321.*

Game escaped
out of the inclo-
sure, may be re-
taken on fresh
suit.

18. If conies are hunted out of the warren, or deer out of the park, and the warrener or parker pursue them, he may retake them; for the park or warren is an establishment by the publick, to look after and preserve the

game;

game; for all things unoccupied, in which no man hath a civil right, are under the regulation of the publick: now in parks and warrens, officers are established by authority, to have an eye over the game, and to keep it within the boundaries; so that the property is not altered by driving it out of the inclosures, unless it be also out of the pursuit of the officers; for as long as he that is thus trusted doth pursue it, it is not in its natural liberty, but is still belonging to the park or warren. 2 *Bac. Abr.* 613.

III. Concerning gamekeepers.

1. All lords of manors, or other royalties, not under the degree of an esquire, may by writing under their hands and seals (A) authorize one or more gamekeeper or gamekeepers, within their respective manors or royalties. 22 & 23 C. 2. c. 25. s. 2.

Who may appoint a gamekeeper.

2. And may empower him thereby, upon their own manors, to kill hare, pheasant, partridge, or any other game:

With power to kill game.

But if the gamekeeper shall, under colour thereof, kill or take the same for the use of the lord, and afterwards sell and dispose thereof without the lord's consent; and be convicted, on complaint of such lord, and on oath of one witness, before one justice; he shall be committed to the house of correction for three months, to be kept to hard labour. 5 *An. c.* 14. s. 4.

3. But no lord of a manor shall make above one person to be gamekeeper within any one manor, with power to kill game. And the name of such person shall be entred with the clerk of the peace where the manor lies; the entry to be made and viewed without fee; and a certificate thereof shall be granted by the clerk of the peace, on payment of one shilling:

One gamekeeper in one manor; and to be entred with the clerk of the peace.

And if any other gamekeeper, whose name is not so entred, *who shall not be otherwise qualified* by the laws of this kingdom to kill game, shall kill, sell, or expose to sale any hare, pheasant, partridge, moor, heath game, or grouse; he shall on conviction before one justice, on oath of one witness, forfeit for every offence 5 l., half to the informer, and half to the poor, by distress: for want of distress, to be sent to the house of correction for three months for the first offence, and for every other offence four months. 9 *An. c.* 25. s. 1.

Who shall not be otherwise qualified] From these words it seemeth clear, that a gamekeeper who is qualified in his

To be also a
servant of the
lord, or imme-
diately employed
for him.

own right to kill game, need not to be entred with the clerk of the peace.

4. And moreover, by the 3 G. 2. 11. it is further enacted, that no lord of a manor shall make any person to be a gamekeeper with power to kill game, unless such person be qualified by the laws of this realm so to do; or unless such person be truly and properly a servant to the said lord; or be immediately employed and appointed to take and kill the game for the sole use of the said lord, and not otherwise:

And if any person, not being qualified by the laws so to do, or not being truly and properly a servant of any lord of a manor, or not immediately employed and appointed to take and kill the game for the sole use or immediate benefit of the said lord, shall under colour or pretence of any power or authority, deputation or qualification to him granted by any lord of a manor, take and kill any hare, pheasant, partridge, or other game whatsoever; or shall keep or use any greyhounds, setting dogs, hays, lurchers, guns, tunnels, or any other engine, to kill and destroy the game; he shall forfeit 5 l. in like manner. *f. 1.*

Gamekeeper's
power to search.

5. The gamekeeper (so authorised) may search for dogs and engines, and seize the same for the use of the lord, or destroy them. 22 & 23 C. 2. c. 25. *f. 2.*

But it hath been adjudged, that an authority from the lord of the manor is not of itself sufficient for this purpose, but that he ought to have a warrant from a justice of the peace. *Comb. 183. Carpenter and Adams.* At least it may be safe to have such warrant, especially if any houses are to be entred and searched.

For it would give too great a power to the gamekeepers, to leave it in their discretion to search what places they shall think proper, as also to constitute them the judges whether such or such a person is or is not qualified to kill game. Therefore it is best to have a warrant from a justice of the peace, after information and oath of the offence first made.

Whether he may
carry a gun out
of the manor.

6. *M. 9 G. 3. Rogers & Carter.* The plaintiff *Rogers* brought an action against the defendant being a justice of the peace, for taking and carrying away the plaintiff's gun. On a verdict for the plaintiff, a new trial was moved for. The case was, The plaintiff, being gamekeeper within the manor of *Ringwood*, in beating for game within the said manor, sprung a covey of partridges, which he shot at within the said manor. They took a second flight, and he pursued them out of the manor, but could not

not find them. As he was returning to the manor of *Ringwood*, he was met by the defendant about three quarters of a mile distant from that manor, who asked him if he had a qualification. The plaintiff answered, I have a deputation from the lord of the manor of *Ringwood*. The defendant replied, you are now out of that manor; and demanded his gun, and took it from him. The defendant did not shoot out of the manor, but was three quarters of a mile out of the manor, with his gun and dogs, with an intention to shoot at game. By the court: The question is, whether the justice had a right to take the plaintiff's gun from him, whilst he was sporting for the purpose of killing game in another manor, out of the manor of *Ringwood*. And we are all of opinion, he had not such right. If he had killed game where he was not gamekeeper, he might have been convicted in the penalty of 5 l; but he was intitled to keep and have dogs, guns, and nets any where, and a gamekeeper's gun cannot be seized either in going to or returning from the manor, in any other place; and if gamekeepers were permitted to seize one another's guns, it would create a kind of border war amongst them. And the rule to shew cause why there should not be a new trial was discharged. 2 Wilson. 387.

V. Qualification by estate or degree to kill game; with the punishment of persons unqualified.

The qualification by estate for killing game, in the reign of K. *Richard* the second, was 40 s a year; in the reign of K. *James* the first it was advanced to 10 l a year; and after that in some instances to 40 l a year; and at last in the reign of K. *Charles* the second it was raised to 100 l a year. Not that the laws have become gradually more severe; but as the value of money decreased, the qualification was raised in proportion, the estate continuing nearly the same; for an estate of 40 s a year in the reign of K. *Richard* the second was not much inferior to an estate of 100 l a year in the reign of K. *Charles* the second. And the penalty for destroying the game was even more severe then than it is now; as I shall shew. For as those ancient laws relating to the game are still in force, and are generally enacted so to be by the subsequent statutes, it will be necessary in order to have a thorough knowledge

of this matter to insert them in their order ; because the penalties on each being different, the prosecutor or justices may chuse which of them they will convict an offender upon. Thus by the statute of the 5 *An.* hereafter following, if a person not having 100 l a year shall keep dogs or engines to destroy the game, he shall forfeit 5 l ; but if such person have not 40 s a year, he may upon the statute of R. 2. be punished by a year's imprisonment, and so of the rest : provided that no person be prosecuted upon more than one act for one offence.

40 s a year.

1. The first qualification relating to the game, was in the 13th year of the reign of R. 2. by which it is enacted, that no layman which hath not lands or tenements of 40 s a year, nor clergyman if he be not advanced to 10 l a year, shall have or keep any greyhound, hound, nor other dog to hunt ; nor shall use fyrets, hays, nets, harp-pipes, nor cords, nor other engines for to take or destroy deer, hares, nor conies, nor other gentlemens game : on pain of a year's imprisonment. And the justices of the peace (that is, in their sessions) shall inquire of the offenders in this behalf, and punish them by the pain aforesaid. 13 R. 2. *β.* 1. *c.* 13.

30 l a year.

2. The next qualification by estate or degree to kill game, was by a statute in the 1 *ŷ.* whereby it is enacted that every person who shall keep any greyhound for coursing of deer or hare, or setting dog or net to take pheasants or partridges (except he be seised, in his own right or the right of his wife, of 10 l a year estate of inheritance, or 30 l a year of a lives estate, or goods to the value of 200 l, or be the son of a knight or lord, or the son and heir apparent of an esquire) and be thereof convicted, by confession, or oath of two witnesses, before two justices, he shall be committed to gaol three months, unless upon conviction he pay 20 s to the churchwardens for the use of the poor, or after one month after his commitment he become bound by recognizance with two sureties before two justices, in 20 l a piece, not to offend again in like manner. 1 *ŷ.* *c.* 27. *f.* 3.

40 l a year.

3. The next qualification relates to deer and conies only, in the 3 *ŷ.* *c.* 13. by which it is enacted, that if any person not having hereditaments of 40 l a year, or not worth in goods 200 l, shall use any gun or bow to kill any deer or conies ; or shall keep any buckstall, nets, or coney dogs (except he have grounds inclosed, and used for the keeping of deer or conies, the increasing of which said conies shall amount to the value of 40 s a year ; or keepers

keepers or warreners in their parks, warrens, or grounds);
such case any person having lands or hereditaments of
40l a year in fee, or for life, in his own right or the
right of his wife, may take from such person to his own
use for ever such guns, bows, buckstalls, nets, and coney
dogs. 37. c. 13. f. 5.

4. The next qualification relates to pheasants and par-
tridges only, and is as follows: Every free warrener, lord
of a manor, or freeholder seised in his own or his wife's
right, of 40l a year of inheritance, or lives estate of 80l,
or worth in goods 400l, may take pheasants and par-
tridges (in the day time only) in his own free warren,
manor, or freehold, betwixt Michaelmas and Christmas
yearly. 77. c. 11. f. 7.

5. The last general qualification by estate or degree to
kill game, and which is now most to be regarded, is in
22 & 23 C. 2. c. 25. by which it is enacted, that every
person, not having lands and tenements, or some other estate of
inheritance, in his own or his wife's right, of the clear yearly
value of 100l per annum, † or for term of life, or having
lease or leases of 99 years, or for any longer term, of the clear
yearly value of 150l, (other than the son and heir apparent
of an esquire, or other person of higher degree, and the owners
and keepers of forests, parks, chases, or warrens, being stocked
with deer or conies for their necessary use, in respect of the
said forests, parks, chases or warrens) is hereby declared to
be a person by the laws of this realm, not allowed to have or
keep for himself or any other person, any guns, bows, grey-
hounds, setting dogs, ferrets, coney dogs, lurchers, hays, nets,
dowbels, barepipes, gins, snares, or other engines for the tak-
ing and killing of game. f. 3.

Other than the son and heir apparent of an esquire] Es-
quire, *escuyer*, *scutarius*, called by the Saxons *schilt knaben*
or *knappen* (from whence cometh the word *knave*, which
anciently signified a servant), is a name of dignity, next
above the common title of gentleman, and below a knight.
Heretofore he signified one that was attendant, and had
his employment as a servant, waiting on such as had the
order of knighthood, bearing their shields, and helping
them to horse, or such like. And this title is of that na-
ture with us now, that to whomsoever either by blood,
or place in the state, or other eminency, we conceive

† Upon this it hath been shrewdly remarked, that there is fifty
times the property required to enable a man to kill a partridge, as
to vote for a knight of the shire. 4 Blackst. c. 13.

some higher attribute should be given than that sole title of gentleman, knowing yet that he hath no other honorary title legally fixed on him, we usually style him an esquire, in such passages as require legally that his degree or state be mentioned. *Seld. Tit. of Hon.* 374, 462, 687.

Or other person of higher degree] In the order of precedence, the heralds, next below knights and their sons, and above esquires, rank (1) colonels, (2) serjeants at law, and (3) doctors in the three learned professions. *Blackst. b. 1. c. 12. p. 405. (7th edit.)*

Searching for
dogs and engines.

6. *And the gamekeeper, or any other person (authorised by warrant (B) of a justice of the peace) may in the day time search the houses, outhouses, or other places of any such person prohibited by this act to keep or use the same, as upon good ground shall be suspected to have or keep in his custody any guns, bows, greyhounds, setting dogs, ferrets, coney dogs, or other dogs to destroy hares or conies, hays, tramels, or other nets, lowbels, harepipes, snares, or other engines aforesaid, and the same to seize, and keep, for the use of the lord of the manor, or otherwise to cut in pieces or destroy.* 22 & 23 C. 2. c. 25. s. 2.

20 s. penalty for
keeping dogs and
engines.

7. *And if any unqualified person shall have, keep, or use any bows, greyhounds, setting dogs, ferrets, coney dogs, hays, lurchers, nets, tunnels, lowbels, harepipes, snares, or any other instruments for destruction of fowl, fowl, or other game; and shall not give a good account before a justice, to the satisfaction of such justice how he came by the same, or else shall not in some convenient time (to be set by such justice) produce the party of whom he bought the same, or some other credible person to depose upon oath such sale thereof; he shall forfeit for every offence not under 5s, nor above 20s, half to the informer, and half to the poor, by distress; for want of distress, to be committed to the house of correction, not more than one month, nor less than ten days, there to be whipt and kept to hard labour. And if any person so produced or charged with the said offence, shall not before the justice give such evidence of his innocence as aforesaid, he shall be convicted thereof in the same manner as the person first charged therewith, and so from person to person till the first offender be discovered.* 4 & 5 W. c. 23. s. 3.

And all lords of manors or their gamekeepers may within their manors oppose and resist such offender, in the night time, in the same manner as if the fact had been committed

committed in any ancient chase, park, or warren inclosed.

§ 4.

And no certiorari shall be allowed to remove any conviction, unless the party first become bound to the prosecutor in 50 l, with such sufficient sureties as the justice shall think fit, to pay within a month after the conviction confirmed, or *procedendo* granted, full costs and charges; and in default thereof, the justice shall proceed to the execution of the conviction. § 7.

8. But by a subsequent statute 5 An. c. 14. *If any person, not qualified by the laws of this realm so to do, shall keep or use any greyhounds, setting dogs, hays, lurchers, tunnels, or any other engine to kill and destroy the game, and shall be thereof convicted (CDE) on the oath of one credible witness, before one justice, he shall forfeit 5 l, half to the informer, and half to the poor of the parish where the offence was committed, to be levied by distress (F); for want of distress, to be sent to the house of correction (G) for three months for the first offence, and for every other offence four months.*

5 l penalty for keeping dogs and engines; and the same to be seized.

And any justice, and lord within his manor, may take away such dogs, nets, or other engines, which shall be in the power or custody of any person not qualified. § 4.

Not qualified by the laws of this realm] In the case of *K. and Chandier, T. 12 W. Holt Ch. J.* in delivering the opinion of the court, upon a conviction for deer-stealing, said, that in these convictions by justices of the peace in a summary way, where the ancient course of proceeding by indictment and trial by jury is dispensed with, the court may more easily dispense with forms; and it is sufficient for the justices, in the description of the offence, to pursue the words of the statute, and they are not confined to the legal forms requisite in indictments for offences by the common law. *L. Raym. 581.*

And in the case of *Q. and Matthews, T. 10 An.* On a conviction upon this statute, exception was taken, that the conviction reciting the defendant not to be a person so and so qualified and enumerating distinctly the several qualifications in 22 & 23 C. 2. omitted a new qualification allowed by this act, namely, that he was not a person authorised by a lord (or lady) of a manor to kill game for his use. And by the court; Had it been generally laid thus, that he not being a person qualified according to law, and so on, it had been enough; but the qualifications being distinctly and severally mentioned, the omission of one is fatal. 10 *Mod. 26.* [But the case was adjourned.]

And in the case of *K. and Marriot, M. 4 G.* There was a conviction for keeping a greyhound; reciting that one *William Youne* came and informed, that the defendant being a person not qualified to keep a greyhound, did nevertheless keep one at such a place, and therewith killed several hares; and that he being summoned did appear, and being asked what he had to say, offered nothing in excuse, and therefore the justice convicted him. It was objected, that the justice should set out, why the defendant is not a qualified person, as that he is not the son of an esquire, nor has 100 l a year in his own or his wife's right: For he ought not to make himself the sole judge, but give the reasons at large. *Parker Ch. J.* seemed to think the conviction would be good, having followed the words of the statute, and that if the defendant was qualified, he ought to have shewn it before the justice, being summoned for that purpose. *Eyre J.* started an objection, that it was not the justice that had taken upon him to say the defendant was not qualified; but only the witness: for the conviction runs, that the witness being sworn saith, that the defendant *being a person no way qualified* did such a day keep a greyhound; so that it appears, the witness has given the law to the justice, and takes upon himself to judge of the defendant's qualifications, and the justice is only made use of as an instrument, to reduce the opinion of the witness into a conviction. By *Parker C. J.* the *being not qualified* should be the conclusion of the justice, and not the words of the witness; for he ought not to swear generally a man is not qualified, and such a general proof will not be good: This is only an invention, to support a conviction in general terms, which would be bad if the particular facts were alledged. *Pratt J.* Where the justices have a summary jurisdiction, and no appeal lies (as in this case), we must keep them up strictly to the law; and I should be glad if we could make them set out the whole particularly. The case was adjourned. And afterwards *Pengelly* serjeant mentioned two cases, *Q. and Hayward, E. 12 An.* There it was, *not being qualified, licensed, or authorised to keep any engine*, and it was quashed. The other was the same term, and quashed, because no qualifications were mentioned. And towards the end of the term this conviction was quashed; and the principal reason declared to be, because the witnesses had taken upon themselves, to judge of the qualifications. *Str. 66.*

And in the case of *K. and Hill, H. 12 G.* the defendant was convicted, for unlawfully keeping a lurcher and a
gun

gun to kill and destroy the game, *not being qualified by the laws of this realm, so to do.* And the conviction being removed into the king's bench by certiorari, was quashed; because it was only averred generally, that he was not qualified; and did not aver that the defendant had not the particular qualifications mentioned in the statute, as to degree, estate, and the rest. *L. Raym. 1415.*

And in the case of *Bluet and Needs, E. 9 G. 2.* In an action *qui tam* on the statute, it was objected, that it is not sufficient to say he was not qualified, without shewing he had not 100 l a year, nor other estate which makes a qualification. By the court, It is sufficient if the words of the statute be pursued; and the defendant may come in and shew his qualification. Indeed, *convictions* have been quashed for not setting forth what was the want of qualification, because it must be made out before the justice, that he had no such qualification as the law requires; and therefore the justice ought to return, that he had no manner of qualification, before he can convict the defendant. *Comyns, 522.*

And in the case of *K. and Bryan, M. 12 G. 2.* which was a conviction on the gin act, exception was taken, that there was no averment, that it was not sold to be used in medicine: and the cases on the game act were mentioned, where in convictions it is necessary to exclude all the qualifications for killing game. On the other hand, it was insisted that the reason of that was; because those were in the enacting clause, whereas this about medicine comes in by way of proviso, and is by way of defence to be shewn on the defendant's part. And for that purpose was cited *K. and Theed, M. 11 G.* where in a conviction for obstructing an excise officer on the 8 *An. c. 9.* it was objected, that it not being averred to be in the day, it should have been shewn that there was a constable present, which is made necessary in the night; but it was held to be well, and that its being in the night should have been shewn on the defendant's part. And by the court, This is brought within the general enacting clause: and the true distinction is, where the extenuation comes in by way of proviso, or exception. And the conviction was confirmed. *Str. 1101.*

Finally, in the case of *K. and Jarvis, H. 30 G. 2.* The conviction did set forth, that the defendant did unlawfully keep and use, and had in his custody and possession, one setting dog and setting net, for the destruction of the game; and that he the said *Jarvis* was not then any
wise

wife qualified, impowered, licensed, or authorized, by or according to the laws of this realm to kill game. It was moved to quash this conviction. And by lord *Mansfield* Ch. J. It is now settled by the uniform course of authorities, that the qualifications must be all negatively set out : Otherwise the justices have no jurisdiction over the persons killing game, or keeping dogs or engines for the destruction of it. The *obiter* saying in 10 *Mod.* (if it was a book of better authority than it is) would signify nothing, when the determinations are the other way. There is a great difference between the purview of an act of parliament, and a proviso in an act of parliament. In the case of *K. and Marriot* ; where the witness swears only generally, it was holden insufficient : And the justices who convict upon the evidence of the witness, can have no other or further ground to go upon, than what the witness swears. In the case of *K. and Hill*, it is the very point established and settled, that the general averment is not sufficient, and that it must be averred that the defendant had not the particular qualifications mentioned in the statute. In the case of *Bluet Qui tam*, and *Needs* ; the general averment of the defendant's not being qualified, was holden to be sufficient upon an action, though insufficient upon a conviction : The distinction is obvious between an action and a conviction. In the present case, the witness swears generally, that the defendant was not qualified. The justices adjudge it generally, only. The stream can go no higher than the spring head. So the conclusion, which the justices draw from the testimony of the witness, must be as general as that testimony. In the case of *K. and Pickles*, *M. 19 G. 2.* it was laid down as a rule, that the want of the particular qualifications required by the 22 & 23 *C. 2. c. 25.* ought to be negatively set out in convictions. And the only question there was, whether it was necessary to add the inferred or argumentative qualification, collected from the 5 *An. c. 14.* but not mentioned in the 22 & 23 *C. 2. c. 25.* of his not being lord of a manor. *Exceptio probat regulam* : Nor was the general rule at all doubted or disputed in that case. In indictments upon the 8 & 9 *W. c. 26.* for having a coining press, every thing which shews that the defendant had no authority, must be negatively set out : And so it was done, in the indictment of *Bell*, which was lately argued before all the judges. I take the point to be settled, by the constant tenor of all the authorities ; and I think upon very good reason (if there was need to enter into

into the reason at large, after it has been fully settled already)——Mr. justice *Denison* concurred, and said, it was a clear case, and that it was fully settled and established, that in these convictions, the want of the particular qualifications mentioned in the 22 & 23 C. 2. ought to be negatively set out. If not, the justices have no jurisdiction to convict the defendant as an offender. And the evidence and adjudication ought both of them to be, that he hath not the qualifications which are specified in that act, nor any of them. Indeed you are not obliged to go further than the words of this act of parliament of the 22 & 23 C. 2. and that was the case of *K. and Pickles*. But however, in that case, the present point was established, and taken to be indisputable.——Mr. justice *Foster* also concurred, and said, that on negative acts of parliament, the point is fully settled and established, that the particular qualifications mentioned in the purview of them, must be negatively specified in convictions made upon them.——And by the court unanimously, the conviction was quashed. *Burrow, Mansfield*. 148.

Shall keep or use] *H. 8 G. K. and Filer*. Conviction for keeping a lurcher to destroy game, not being qualified. Exception was taken, that it was not shewn he *used* the dog to destroy game; and it may be he only kept it for a gentleman who was qualified, it being common to put out dogs in that manner. But by the court, The statute is in the disjunctive, *keep or use*; so that the bare *keeping* a lurcher is an offence; and so it was determined in the case of *K. and King, E. 3 G.* which was a conviction for keeping a gun; and it was not doubted by the court, whether the *keeping* was not enough to be shewn, but the only question they made was, whether a gun was such an engine as is within that statute; and in that case a difference was taken, as to the keeping a *dog*, which could only be to destroy the game; and the keeping a *gun*, which a man might do for the defence of his house. And the conviction was confirmed. *Str.* 496.

Use] In the case of *K. and King* aforesaid, *Parker Ch. J.* said, that walking about with intent to kill game, is evidence of *using* the instrument for that purpose. *Sess. C. V. 1.* 88.

Any greyhounds, setting dogs, hays, lurchers, tunnels, or any other engines] *H. 13 G. 2. Hooker and Wilks*. An action was brought on the 8 G. c. 19. for using a bound

to destroy game. And after a verdict for the plaintiff, the judgment was arrested; for the statute of the 5 *An. c. 14.* has not the word *bound*, and the words *other engines* come after *nets*, and are applicable only to inanimate things. And this being a penal law, cannot be extended. The statute of the 22 & 23 *C. 2. c. 25.* has indeed general words *or any other dogs to destroy game*; but this is not a conviction on that statute. *Str. 1126.*

Nor indeed could it have been a conviction on that statute, for any penalty is certain for killing and destroying the game; for the statute of the 22 & 23 *C. 2.* doth not inflict a general penalty upon persons unqualified who shall kill and destroy the game; but only declares, who shall or shall not be deemed unqualified; and gives power to lords of manors and their gamekeepers to seize the dogs, nets, and other engines of such unqualified persons. But if the defendant did kill the game, and had the same in his custody; he might have been prosecuted for the penalty of 20s for such offence, by the statute of the 4 & 5 *W.* hereafter following.—But then the consequence of all this will be, that it is not penal barely to keep a *bound* on this statute of the 5 *An.* but if any unqualified person shall do so, the gamekeepers or others, authorized by a justice's warrant, may seize and keep or destroy the same, by the aforesaid statute of the 22 & 23 *C. 2.*

So in the case of *Reason and Lisle, T. 11 G. 2.* On an action upon the statute, the plaintiff declared, that the defendant did keep and use a *dog* to destroy the game. It was objected, that he ought to have expressed what sort of dog; for it might be a mastiff, or a lap dog, which might chance to kill game; and the statute only mentions greyhounds, setting dogs, and lurchers; and this being a penal law, shall not be extended by equity. And of this opinion was the court. And judgment was arrested. *Comyns, 576.*

Any other engines] *T. 11 G. 2. K. and Gardiner.* It was moved to quash a conviction, for unlawfully having and keeping a *gun*, being an engine or instrument for destroying the game. And it was urged, that this is no sufficient charge within this act, or any other of the laws relating to the game: for it is not said, that the defendant used the gun for the destruction of game; and a gun is not an instrument so far appropriated to killing game, as that it is criminal for a person to have one in his custody only: And it would have been altogether as well, if it had been said

said that the defendant had in his custody a *game* for the destruction of the game, which may possibly be used for that purpose. The only offences intended to be prevented by the act are, the keeping of engines appropriated to, and which can only be used in, the destroying of game. A gun is an engine, not for killing the game, but for the defence of a man's house. And the whole court were clearly of opinion, that this conviction is not good. For (as they argued) if the statute is to be construed so largely, as to extend to the bare having of any instrument, that may possibly be used in destroying game, it will be attended with very great inconvenience; there being scarce any, tho' ever so useful, but what may be applied to that purpose. And tho' a gun may be used in destroying game, and when it is so, doth then fall within the words of the act; yet as it is an instrument proper, and frequently necessary to be kept and used for other purposes, as the killing of noxious vermin, and the like, it is not the having a gun, without applying it in the destruction of game, that is prohibited by the act: but otherwise it is of lurchers, harepipes, and such like, which are peculiarly fitted or disposed for killing game. The bare *keeping* of these for the purpose of killing game, is sufficient to convict an offender, and it will be incumbent upon the defendant himself to prove, that he kept them for other purposes. And the conviction therefore was quashed. After which, *Strange* solicitor general said that in the case of *K. and King, E. 3 G.* Lord *Macclesfield* said, that he was in the house of commons when this act was made, and he himself objected to the inserting of the word *gun* therein, because it might be attended with great inconvenience. *Andr. 255. Sess. C. V. 2. 204. Str. 1098.*

And shall be thereof convicted] *H. 6 G. K. and Johnson.* Conviction for keeping a gun, not being qualified. Exception was taken, that here was not a reasonable *summons*; for it was made on the fifth of *October*, to appear the same day, which might be impossible upon account of distance, or the summons being served late, and his witnesses might not be got together on so short a warning; then it is to appear *at the parish aforesaid*, whereas there are two parishes mentioned before; so the man may have gone to one, whilst they were convicting him at the other. It was answered, that the defendant appeared at the time and made defence, so that cures all defects

fects in the summons. And by the court, The answer is right. *Str.* 261.

H. 5 G. 2. K. and Heber. On a rule to shew cause, why an information should not be granted against the defendant Mr. *Heber*, a justice of the peace, for convicting two persons, *Hargrave* and *Lancaster*, for killing game not being qualified; the complaint in relation to *Hargrave* was, that the defendant sent his warrant for him, by which he was arrested, without any previous information upon oath; in relation to *Lancaster*, the complaint was, that he happening to be present at the time *Hargrave* was convicted, the defendant took that opportunity of convicting him also, without giving him any previous summons, by which he might prepare himself for his defence. The court (the chief justice being absent) were very clear, that an information ought to go against the defendant for his behaviour in relation to *Lancaster*; for they said, it was a most known rule of common justice, that no man ought to be convicted of an offence, till he has previous notice given him of the charge, that he may be prepared to put in his answer to it. Accordingly the rule, as to him, was made absolute. As to *Hargrave*, judge *Probyn* thought, that the rule, with respect to him also, ought to be made absolute. He said, a warrant deprives a man of his liberty; and therefore a summons ought only to issue, and not a warrant, without an information upon oath. The other two judges did not think this a sufficient cause for granting an information. And therefore the rule, with respect to *Hargrave*, was discharged.— In this case, the court would not proceed to make a rule to shew cause, until the convictions were removed thither by certiorari: for, they said, if there was no conviction, there ought to be no information; and if there was a conviction, this ought to appear by the record. 2 *Barnardist.* 34, 77, 101.

On the oath of one credible witness] *H. 9 G. K. and Gage.* The defendant was convicted for using a greyhound in killing hares. Exception was taken to the conviction, that the statute hath only given the justices jurisdiction to convict upon the oath of one or more credible witnesses, whereas this was upon his own confession, which it was insisted the justices had no power to take. But by the court, The conviction must be confirmed. The intent of mentioning the oath of one witness, was only to direct the justices, that they should not convict on less evidence: suppose the confession had not been before the justices,

justices, but before two witnesses who had sworn it; that would be convicting him on the oaths of witnesses, and yet the evidence would not be so strong as this. Here the justices had a better evidence, than the oath of any single witness; and it is a monstrous thing to say, that a better sort of evidence shall not do. *Str.* 546.

Credible witness] *M.* 2 *G.* 2. *K.* and *Stone*. A conviction was quashed, because the informer was the witness; divers convictions having been quashed for the same reason before. *L. Raym.* 1545. The same adjudged in the case of *K.* and *Blaney*, *T.* 11 *G.* 2. *Andr.* 240. And in the statute of the 2 *G.* 3. *c.* 19. it is recited, that in prosecutions on the act of 8 *G.* *c.* 19. in the courts at *Westminster*, where a part of the penalty is given to the poor of the parish, the inhabitants of such parish had been disallowed to give evidence; and therefore in that case, to remedy the same, the act gives the whole penalty to the prosecutor, in order to enable the inhabitants to give evidence.

Before one justice] *H.* 12 *G.* *K.* and *Buck*. It was moved, to quash an indictment for killing a hare, this not being a matter indictable, the statute appointing a summary proceeding before justices of the peace; and a case was cited *K.* and *James*, *T.* 1 *G.* where an indictment for keeping an alehouse was quashed, because the statute of the 3 *G.* *c.* 3. had directed a particular remedy. And by the court, The indictment must be quashed. *Str.* 679.

Shall forfeit 5 l.] *T.* 10 *An.* 2. and *Matthews*. On a conviction, exception was taken, that the person was charged with so many 5 l, as he had killed hares in the same day. And the court was of opinion, that the offence for which the statute gave the forfeiture, was the keeping dogs and engines, and not killing the hares. If a man not qualified goes a hunting, and kills never so many hares on the same day, he would forfeit but one 5 l, for it is but one offence; but if a man keeps dogs, and goes a hunting several days, and kills hares, if it was thus laid, that he such a day kept dogs and killed, and then again such a day, by laying thus severally, the offence is severed, and he shall forfeit 5 l for each offence. *10 Mod.* 26.

So in the case of *Marriot* and *Shaw*, *E.* 4 *G.* where the defendant was convicted, that upon such a day he kept and used a greyhound to kill and destroy the game at such

such a place, that on the same day he kept and used a greyhound to kill and destroy the game at another place, and so at a third place, and killed several hares at the said several places; it was adjudged by the court, that this being all done on the same day, was only one offence; for this statute does not give 5*l* for every hare; but only says, if any unqualified person shall keep or use any greyhound, or the like, to kill and destroy the game, he shall forfeit 5*l*. *Camyns*, 274.

To the poor of the parish where the offence was committed. In some places a man may stand in one parish (or county), and shoot into two or three: in such case, the place where the offence was committed is, where the party stood when he shot, and not where the object was which he shot at. *Skow*. 339. *M*. 3 *W. K.* and *Allop*.

By distress] *T. 9 G. K.* and *Burchet*. The court ordered an attachment (unless cause shewn) against the town clerk of *Guildford*, and a defendant convicted on the game act, for granting and suing out a replevin of goods distrained for the penalty. But on shewing cause the next term, when *Eyre J.* only was present, he discharged the rule, because it was only a contempt to the inferior jurisdiction of the justices, and in that case the king's bench never interposes. *Str.* 567.

But in the case of the king against the sheriff of *Leicestershire* and others, *M. 2 G. 2.* An attachment was moved for against the defendants, for replevying three horses, which were seized as forfeited upon a justice's warrant, they being driven in a waggon contrary to act of parliament. The court, tho' they would not grant an attachment, yet made a rule to shew cause why an information should not go. And on shewing cause, the court thought there was enough to excuse the sheriff; but granted it against *Parsons* whose horses were seized, because he knew that the justice had granted this warrant; but it did not appear that the sheriff did. 1 *Barnardist.* 110.

And in the case of *K. and Monkhouse*, *E. 16 G. 2.* The court granted an attachment against the under-sheriff of *Cumberland*, for granting a replevin of goods distrained on a conviction for deer-stealing. *Str.* 1184.

For want of distress to be sent to the house of correction] *T. 12 G. Hill* and *Bateman*. Before *Raymond Ch. J.* at *Westminster*. The defendant *Bateman*, being a justice of the peace, had convicted the plaintiff for destroying game, and

and though (as it was proved) the plaintiff had effects of his own, which might have been distrained, which were sufficient to answer the penalty he had incurred, yet the defendant sent him immediately to *Bridewell*, without endeavouring to levy the penalty upon his goods: and an action of trespass and false imprisonment being brought against *Bateman* for this commitment, the chief justice was of opinion, that the action well lay. *Str.* 710.

And [no] certiorari shall be allowed to remove the conviction or other proceedings on this act, unless the party convicted shall before the allowance thereof become bound (H) to the prosecutor in 50 l, with such sureties as the justice shall think fit, to pay full costs and charges in 14 days after the conviction [confirmed], or procedendo granted. And in default thereof, the justice shall proceed in execution of the conviction in such manner as if no certiorari had been awarded. 5 An. c. 14. s. 2.

Note; The word [no] is inserted instead of the words [if any] which are in the act, since that word seemeth necessary to make up the sense; and the word [confirmed] is added for the like reason. And indeed there have been too many inadvertencies in the drawing up of this act; for there is false grammar in no fewer than six places, besides other mistakes.

9. And the constable, authorised by a justice's warrant, shall enter into and search (in such manner and with such power as in case where goods are stolen, or suspected to be stolen) the houses, outhouses, or other places belonging to such houses of suspected persons not qualified: And if any hare, partridge, pheasant, pigeon, fish, fowl, or other game, shall (upon such search, or otherwise) be found, the offender shall be carried before a justice; and if such person do not give a good account how he came by the same, such as shall satisfy the said justice, or else shall not in some convenient time, to be set by the justice, produce the party of whom he bought the same, or some other credible person to depose upon oath such sale thereof, he shall be convicted by the said justice of such offence, and upon such conviction shall forfeit for every hare, partridge, pheasant, fish, fowl, or other game any sum not under 5 s, and not exceeding 20 s, half to the informer, and half to the poor, by distress; for want of distress, to be committed to the house of correction not more than one month, nor less than ten days, there to be whipt and kept to hard labour. 4 & 5 W. c. 23. s. 3.

Search for game; with 20 s penalty for having it.

Or other game] Rabbits killed in a private warren, are not game within this act. *L. Raym.* 151.

For every hare, fish, fowl, or other game] These words are very penal.

And if any person so produced, or charged with the said offence, shall not before the justice give such evidence of his innocence as aforesaid, he shall be convicted thereof in the same manner as the person first charged therewith, and so from person to person till the first offender be discovered. id. f. 3.

And no certiorari shall be allowed to remove any conviction, unless the party first become bound to the prosecutor in 50 l. with such sufficient sureties as the justice shall think fit, to pay within a month after the conviction confirmed, or procedendo granted, full costs and charges; and in default thereof, the justice to proceed to the execution of the conviction. id. f. 7.

Carriers and others having game in their possession.

10. If any higler, chapman, carrier, innkeeper, victualler, or alhousekeeper, shall have in his custody or possession or shall buy, sell, or offer to sell any hare, pheasant, partridge, moor, heath-game, or grouse, unless such game in the hands of such carrier be sent up by some person qualified; (or, if any person whatsoever, whether qualified or not, shall sell, expose, or offer to sale any hare, pheasant, partridge, moor, heath-game, or grouse, 28 G. 2. c. 12.) he shall be carried before a justice where the offence is committed (I); and being convicted thereof (in three months after the offence) on view, or oath of one witness, he shall forfeit for every hare, pheasant, partridge, moor, heath-game, or grouse, the sum of 5 l. half to the informer, and half to the poor, by distress (K): for want of distress, to be committed (L) to the house of correction for the first offence three months, and for every other offence four months. 5 An. c. 14. f. 2.

And no certiorari shall be allowed to remove the conviction or other proceedings, unless the party convicted shall before the allowance thereof, become bound to the prosecutor in 50 l. with such sureties as the justice shall think fit, to pay full costs in 14 days after the conviction confirmed, or procedendo granted. And in default thereof the justice shall proceed in execution of the conviction, in such manner as if no certiorari had been awarded. 5 An. c. 14. f. 2.

And if any hare, pheasant, partridge, moor, heath-game, or grouse, shall be found in the shop, house, or possession of any poulterer, salesman, fishmonger, cook, or pastry cook, or of any person not qualified in his own right to kill game, or intitled thereunto under some person so qualified, it shall be deemed an exposing thereof to sale. 9 An. c. 25. f. 2. 28 G. 2. c. 12.

And any justice of the peace, and lord within his manor, may take away any such hare, pheasant, partridge, moor, heath-game,

game, or grouse, or any other game, from any such higler, chapman, innkeeper, victualler, or carrier, or any other person not qualified, which shall be found in his custody or possession. 5 An. c. 14. s. 4.

And any person that shall destroy, sell, or buy any hare, pheasant, moor, heath-game, or grouse, and shall in three months make discovery of any higler, chapman, carrier, innkeeper, alehousekeeper, or victualler, that hath bought or sold, or offered to buy or sell, or had in their possession any hare, pheasant, partridge, moor, heath-game, or grouse, so as any one shall be convicted; such discoverer shall be discharged of the pains and penalties hereby enacted for killing or selling such game, and shall receive the same benefit as any other informer. 5 An. c. 14. s. 3.

11. And whereas great mischiefs do ensue by inferior tradesmen, apprentices and other dissolute persons, neglecting their trades and employments, who follow hunting, fishing and other game to the ruin of themselves, and damage of their neighbours, therefore if any such person shall presume to hunt, hawk, fish, or fowl (unless in company with the master of such apprentice duly qualified); he shall not only be subject to the other penalties, but if he be prosecuted for trespasss, in coming on any person's land, and be found guilty, the plaintiff shall not only recover damages against him, but full costs. 4 & 5 W. c. 23. s. 10

Inferior tradesmen killing game.

For no man can come upon another man's ground to kill game, without being liable to an action of trespasss. 2 Bac. Abr. 613.

But if he is qualified to kill game, and the damage found shall be under 40s, he shall in such case pay no more costs than damages. *id.*

But an unqualified person so trespassing, shall pay full costs.

T. 30 & 31 G. 2. *Buxton & Mingay.* In the common pleas. The plaintiff declared, that the defendant being an inferior tradesman, viz. an apothecary, such a day committed a trespass in hunting in the plaintiff's close. On a trial at the assizes, a verdict was found for the plaintiff, with 1s damages, and 40s costs; subject to the opinion of the court, upon a case made, which states, that it was proved at the trial, that the defendant at the time of the trespasss was a surgeon and an apothecary, and not qualified to kill game; that on such a day he was hunting with divers others not qualified, in company with a person who was properly qualified to kill game, and committed a trespasss in the

plaintiff's case. The question for the consideration of the court was, whether upon the facts above stated the defendant shall be deemed an inferior tradesman within the meaning of the statute. This case was argued several times at the bar; and the judges were equally divided. For the plaintiff it was argued, that amongst tradesmen, no line can be drawn with respect to who are superior and who are inferior, but they are all upon an equal footing as tradesmen; but that the line which the legislature intended to draw was, between those that were qualified and those that were not: so that in this respect every tradesman is inferior who is not qualified. For the defendant it was urged, that every case of this kind ought to be determined on its own particular circumstances, and left to the jury, whether the defendant is an inferior tradesman or dissolute person within the statute. The court being equally divided, no rule in this case was made. *2 Wilson 70.* [Indeed, the word *inferior* seems to be applicable rather to the man than to the trade; so as that two persons of the same trade may be one a superior and the other an inferior tradesman.]

Soldiers.

12. By the yearly mutiny acts, if any officer or soldier shall, without leave of the lord of the manor under his hand and seal, destroy any hare, coney, pheasant, partridge, pigeon, or other fowl, poultry, or fish, or his majesty's game, and be convicted thereof, on oath of one witness, before one justice; every officer so offending shall forfeit 5 l to the poor, and the commanding officer upon the place, for every offence committed by any soldier under his command, shall forfeit 20 s in like manner. And if, upon conviction by the justices, and demand thereof made by the constable or overseers of the poor, he shall not in two days pay the said penalties, he shall forfeit his commission.

**The statute of
33 H. 8. con-
cerning guns.**

13. Here next followeth the statute of the 33 H. 8. c. 6. concerning guns: by which it is enacted as follows;

(1) No person, except he in his own right, or in the right of his wife, or some other to his use, have lands, tenements, fees, annuities, or offices, to the yearly value of 100 l, shall shoot in any cross bow, hand-gun, hagbut, or demihake, otherwise than as hereafter is expressed; on pain of 10 l, to be levied and disposed of in any of the three ways hereafter mentioned.

(2) And no person, of what estate or degree soever, shall shoot in, carry, keep, use, or have in his house or elsewhere, any hand-gun, not being in the stock and gun

of the length of one yard; or any hagbut or demihake, not being in the flock and gun of the length of three quarters of a yard; on the like pain of 10 l.

(3) And every person having 100 l a year as above, may seize every such cross bow; and every such hand-gun, hagbut, and demihake being so deficient in length; and he may keep the cross bow to his own use; but he shall in 20 days after seizure break and destroy the hand-guns, hagbuts, and demihakes, on pain of 40 s in like manner, for every gun so seized, and not broken and destroyed; and the same so broken and destroyed he may keep to his own use.

(4) And no person not being qualified as above, shall carry or have in his journey, going or riding in the king's highway or elsewhere, any cross bow bent, or gun charged, or furnished with powder, fire, or touch for the same, except in time and service of war; on pain of 10 l in like manner.

(5) And no person shall shoot with any hand-gun, demihake, or hagbut, at any thing at large, within any city, borough, or market town, nor within a quarter of a mile of the same, except it be at a butt or bank of earth in place convenient, or for defence of his person or house; on pain of 10 l in like manner.

(6) And no person shall command his servant to shoot in any cross bow, hand-gun, hagbut, or demihake, at any deer, fowl, or other thing, except only at a butt or bank of earth, or in time of war; on pain of 10 l in like manner.

(7) But all gentlemen, yeomen, and servingmen of lords, knights, esquires, and gentlemen; and all inhabitants of cities, boroughs, and market towns, may shoot with any hand-gun, demihake, or hagbut of the length as above, but not under, at any butt or bank of earth, in place convenient.

And every such lord, knight, esquire, gentleman, and inhabitant of cities, boroughs, and market towns, may have and keep in their houses any such hand-gun, hagbut, or demihake, of the length aforesaid, to the intent only to use or shoot in the same at a butt or bank of earth.

And every person inhabiting in a house two furlongs from any city, borough, or town, may keep and have in his house, for the only defence of the same, hand-guns, hagbuts, and demihakes, of the length abovementioned; and may use and exercise to shoot in the same at any

butt

butt or bank of earth near to his house, and not otherwise.

And except makers and sellers of the same, having them for that purpose only, and being of the length above.

Also this act shall not extend to persons inhabiting within five miles of the sea; so that they shoot not at any deer, heron, shoveler, pheasant, partridge, wild swine, or wild elk.

Also this act shall not extend to servants carrying the same by their master's command, so that they shoot not at any game.

Nor to any owner of a ship for having or keeping them, of what length soever, to be used in the ship only.

(Nor to persons licensed by the sessions to shoot in hand-guns or birding-pieces, at crow, chough, pye, rook, ring-dove, jay, or smaller birds, for hawks-meat only; so as they shoot no game, and so that they shoot not within 600 paces of a hernery, nor within a hundred paces of a pigeon house, nor in another man's park, forest, or chase. 1 J. c. 27. s. 7.

And except the sheriff, who may carry a gun in the execution of his office. 5 Co. 72.)

(8) And if any person see or find any one offending or doing contrary to this act, he may arrest, and bring or convey him to the next justice of the county where he is found offending; who shall upon *due examination and proof* thereof made before him, by his discretion have full power to commit (M) the offender to the next gaol, there to remain till such time as the said penalty or forfeiture shall be truly contented and paid by the said offender; half to the king, and half to the first bringer or conveyor of the said offender to the justice.

Which *due examination and proof* aforesaid, is intended not to be by a jury, but by witnesses. 1 Vent. 33.

Mr. Dalton says, forasmuch as in this case the justice hath the whole matter committed to himself, and the offenders remain convict upon his examination and proof of witness made before him; therefore he ought to be circumspect in his examination, as also in his mittimus; and farther to make a record (N) of the matter, in writing under his hand, and also to send the estreat of it into the exchequer, whereby the king's duty may be levied. *Dalt. c. 47.*

In the conviction, it is not sufficient to say generally that he had not 100 l a year, but the time must be certainly

tainly alledged, namely, that the defendant on the day and year aforesaid (when the offence was committed) had not 100 l a year. 3 Mod. 280.

And upon such conviction, it hath been adjudged, that a writ of error doth not lie. 1 Ventr. 33.

(9) Also the justices in sessions may inquire of, hear and determine the said offences, so that no less fine than 10 l be assessed upon *presentment* and conviction, to be levied in such case to the king's use only.

And this may also be upon *indictment*. Dalt. c. 47.

And if the jury shall wilfully conceal any the said offences, the court may charge another jury to inquire of such concealment; and if it be so found, the first jury shall forfeit to the king every one 20 s.

(10) Also the leet may inquire of, hear and determine the same; in which case, half the forfeiture shall upon presentment and conviction be levied to the king's use; and one moiety of the other half to the owner of the leet, by distress or action of debt; and the other moiety to him that will sue in any of the king's courts.

And if the jury shall wilfully conceal an offence, the steward may charge another jury to inquire of the concealment; and if it be found, the first jury shall forfeit 20 s each; half to the owner of the leet, by distress or action of debt; and half to him that shall sue in any of the king's courts.

(11) But no person shall be prosecuted but within a year, if it is by the king; and within half a year, if by any other person. †

V. Laws

† This statute of the 33 H. 8. c. 6. is undoubtedly in force, and consequently may be put in execution; nevertheless it seemeth now to be obsolete, the object thereof being a matter not in any use, and the effect of it with respect to the game being superseded as it were by the several subsequent statutes. The original intention was solely for the encouragement of the use of the long bow. And the progress of the matter was as follows:—By the statute of the 19 H. 7. c. 4. it was thus enacted; The king our sovereign lord considering right well, that in the time of his most noble progenitors shooting in long bows hath been much used in this his realm, whereby honour and victory hath been gotten against outward enemies, and the realm greatly defended, and much the more dread among all christian princes by reason of the same; which shooting is now greatly decayed in this realm, forasmuch as now of late the king's subjects greatly

V. Laws for preserving the four footed game in particular.

Which said laws, as hath been said, do seem to concern all persons whatsoever, whether qualified or not.

Now

delight themselves in using of *cross bows*, whereby great destruction of the king's deer, in forests, chases, and parks, daily is had and done, and shooting in long bows little or nothing used, and likely in short space to be lost and utterly decayed, to the great hurt and enfeebling of this realm, and to the comfort of our outward enemies, if remedy be not therefore in due time purveyed; wherefore our said lord the king, willing that his subjects in this realm shall use their long bows after the laudable custom used in time of his most noble progenitors, to the great honour, strength, and defence of this his realm, by the advice of the lords spiritual and temporal and commons in this present parliament assembled, hath ordained and enacted, That no person, without the king's special licence under his placarde, signed and sealed with his privy seal or signet, shall occupy or shoot in any *cross bow* (unless he shoot out of an house for the lawful defence of the same), except he be a lord, or have lands of freehold of 200 marks a year; on pain to forfeit the same, with the apparel thereto belonging, to him who shall seize and take the same.—By the 3 H. 8. c. 13. the qualification was raised to 300 marks a year.—Afterwards, when guns came in use, it was enacted by the 6 H. 8. c. 13. as follows: Where the king's subjects daily delight themselves in shooting in *cross bows*, whereby shooting in long bows is the less used, and divers good statutes for reformation of the same have been made, and that notwithstanding many persons not regarding the penalties of the said statutes, use daily to shoot in *cross bows* and *hand-guns*, whereby the king's deer, and of other lords of this his realm are destroyed, and shall be daily destroyed more and more, unless remedy therefore be provided; it is enacted, that no person shall shoot in any *cross bow* or *hand-gun*, on pain of forfeiting the same, and also 10 l, unless he have by the year to the value of 300 marks; with power to the king to license persons as before.—And the like was enacted by two other statutes in that king's reign (14 & 15 H. 8. c. 7. and 25 H. 8. c. 17.) with some small variations, not material, repealing the former statutes and the licences granted thereupon, and giving the king power to grant new ones; so that they seem to have been intended chiefly for the sake of bringing money into the exchequer by the renewal of licences.—And last of all cometh this statute of the 33 H. 8. c. 6. reciting, Where in the parliament holden in the 25th year of the

Now the four footed game, or the game of beasts, are of three kinds, viz.

I. Deer.

II. Hares.

III. Conies.

I. Of deer.

There have been many laws from time to time enacted against deer stealers; which being not so much altered, as enforced

the king's most gracious reign, one statute was made for the avoiding and eschewing of shooting in *cross bows* and *hand-guns*; since the making whereof divers evil disposed persons, not only presuming the violation of the said statute, but also of their malicious and evil disposed purposes have committed divers detestable and shameful murders, robberies, felonies, riots, and routs, with *cross bows*, little short *hand-guns*, and little *haquebuts*, to the great peril and fear of the king's subjects; and also divers keepers of forests, chafes, and parks, and divers gentlemen, yeomen, and serving men, now of late have laid apart the good and laudable exercise of the long bow, which always heretofore hath been the surety, safeguard, and continual defence of this realm of England, and an inestimable dread and terror to the enemies of the same; and now of late the said evil disposed persons have used, and do daily use, to ride and go in the king's highways, and elsewhere, having with them *cross bows* and little *hand-guns*, ready furnished with quarrels, gun-powder, fire, and touch, to the great peril and fear of the king's subjects; for reformation thereof, it is enacted (as is above set forth).

Subsequent to this, an act was made, 2 & 3 Ed. 6. c. 14. which is curious enough, to shew the progress of fire arms applied to the destruction of the game; the substance of which is this: Whereas an act was made in the 33d year of H 8. for some liberty to shoot in hand-guns, haques, and haquebuts, by which act nevertheless it was provided, that no person should shoot in any of the abovesaid pieces, but at a bank of earth, and not at any deer or fowl, unless the party might dispend 100 l a year, forasmuch as the said act having been advised, as it was then thought, for necessary exercise, tending to the defence of the realm, is grown since to the maintenance of much idleness, and to such a liberty, as not only dwelling houses, dove coats, and churches, be daily damaged by the abuse thereof, by men of light conversation, but also there is grown a customable manner of shooting of *bailshot*, whereby an infinite sort of fowl is killed, and much game thereby destroyed, whereby also

inforced by the subsequent statutes, except only in increasing the penalties, it may be proper to insert them all in their order; and the rather, because an offender, as it seemeth, may still be convicted upon any one of them; and it is generally provided, that such conviction upon one statute, shall be as a bar to all the rest.

Three years imprisonment and fine.

1. The first statute is in the 3 *Ed.* 1. c. 20. which enacts, that if *trespassers in parks* be thereof attained at the suit of the party, great and large amends shall be awarded according to the trespass, and they shall have three years imprisonment, and after shall make fine at the king's pleasure (if they have whereof,) and then shall find good surety that after they shall not commit the like trespass; and if they have not whereof to make fine, after three years imprisonment, they shall find like surety; and if they cannot find like surety, they shall abjure the realm. And if none sue within the year and day, the king shall have the suit.

Trespassers] This is, when a man either chafeth in a park, or endeavours to kill some of the game thereof. 2 *Inst.* 199.

In parks] This act, because it is very penal, is to be understood, not of a nominal park erected without warrant,

the meaning of the statute is defrauded, for that the said use of *hailshot* utterly destroyeth the certainty of shooting, which in wars is much requisite; it is therefore enacted, that no person, under the degree of a lord of parliament, shall shoot in any hand gun within any city or town at any fowl or other mark, upon any church, house, or dove-coat, nor shall any person shoot in any place any *hailshot*, or any more pellets than one at a time; on pain of 10l, and imprisonment for 3 months.

This act continued in force until the 6 & 7 *W.* c. 13. which enacts, Whereas by an act made in the 2 & 3 *Ed.* 6. it was ordained, that no person under the degree of a lord of parliament should shoot in any place any hailshot, or any more pellets than one at one time, on pain of 10l, and imprisonment for 3 months; which act, however useful in those days, hath not for many years last past been put in execution, but become useless and unnecessary; yet nevertheless several malicious persons have of late prosecuted several gentlemen, qualified to keep and use guns, upon the said act; for remedy whereof, be it enacted, that the said act shall be and is hereby repealed.

But the aforesaid act of the 33 *H.* 8. c. 6. continues in force, altho' the object thereof doth not now exist.

grant, but of a lawful park only, whereunto three things are required, 1. A liberty, either by grant or prescription. 2. Inclosure, by pale, wall or hedge. And 3. Beasts savages of the park. 2 *Inq.* 199.

2. The next statute is that intituled *De malefactoribus in parais*, 21 Ed. 1. ft. 2. which enacts, that if any forester, or parker, shall find any trespassers wandering within his liberty, intending to do damage therein, and that will not yield themselves after hue and cry made to stand unto the peace, but do continue their malice, and disobeying the king's peace do flee, or defend themselves with force and arms, altho' such forester, parker, or their assistants, do kill such offenders, they shall not be troubled upon the same.

They may be lawfully resisted.

3. The next statute makes hunting by night, or in disguise, and concealing the same, felony; but within the benefit of clergy; as follows:

By night, or disguised, and concealing the same, felony.

When information shall be made, of any unlawful hunting, in any *forest or park*, by night, or with painted faces, to any of the king's counsel, or to a justice of the peace, of any person to be suspected thereof, he may make a warrant to take and arrest the person, and to have him before the maker of the warrant, or any other of the said counsel, or justices of the peace; who may by their discretion examine him of the said hunting, and of the said doers in that behalf: And if the same person *wilfully conceal* the said huntings, or any person with him defective therein, that then the same concealment be, against every such person so concealing felony. But if he then confesses the truth, and all that he shall be examined of and knoweth in that behalf, then the said offences of hunting by him done, shall be but trespass fineable at the next general sessions. And if any rescous or disobeyance be made to any person having authority to execute the warrant, by any person which so should be arrested, so that the execution of the warrant thereby be not had, then the said rescous and disobeyance shall be felony. And if any person shall be convicted of any such huntings, with painted faces, vizors, or otherwise disguised, to the intent they should not be known, or of unlawful hunting in time of night, then the same person so convicted, to have like punishment as he should have if he were convicted of felony. 1 *H.* 7. c. 7.

[When information shall be made] This information must shew at least just cause of suspicion; and it must be taken in

in writing, because it is the ground of the warrant. 3 *Inst. c. 21.*

In any forest or park] This doth not extend to a chase, nor to any forest or park in use or reputation, which are not so in law. 3 *Inst. c. 21.*

Wilfully conceal] Lord Coke, who is a lover of the common law, and is jealous of every violation of it, seemeth to be out of humour with this act, and calls it an ill-penned law. He observes it is the first that was made for the making of any hunting felony, against that excellent and equal branch of *charta de foresta, nullus de cetera vitam vel membra amittat pro venatione nostra*; and that this, and other old statutes concerning the forest, are called the good old laws and customs, and commanded to be observed; and therefore this new act is too severe for wild beasts, whereof there can be no felony at the common law. And therefore the judges (he says) have made a favourable construction of it, as is set forth in the following notable report:

M. 19 & 20 El. in the king's bench. *Gerrard* the queen's attorney general (who was a grave and reverend man) said openly, that it had been resolved by the judges upon this statute, that if a man in the night, or by day with painted face, do hunt as above, and being examined according to the act doth *conceal* it, yet this is upon the construction of the whole act no felony. For the first clause concerning the concealment, and the last clause concerning the fact itself, must be coupled or joined by construction together; that is to say, If any person be convict of such hunting with painted face, or of unlawful hunting in the night, this conviction must be upon not guilty pleaded; which the judges expounded to be the concealment intended in the first branch; for they held that it ought to be a judicial concealment, and not an extrajudicial concealment before one of the counsel or a justice of the peace, which may lie in averment, so as before it be felony he must be convicted of such hunting upon not guilty pleaded first, and after such conviction, then he must be indicted again upon the whole matter, that he feloniously did conceal it, against the form of the statute; and if the offender upon the first indictment confesseth the indictment, then it is such a judicial confession as this act intendeth, and no felony within this statute.

This

This he says, he heard the attorney report, and did then observe it; which concurring with his opinion, he thought good to publish, and the rather because in *Lambard's* justice, amongst his precedents of indictments, there is an erroneous precedent (he says) of an indictment of felony for the concealment upon the examination before a justice of the peace. And upon the whole he thinks it the clearest way to make it trespass, and not felony; which the party may do at his pleasure. 3 *Inst.* c. 21.

But lord *Hale* says, that this seems a difficult exposition; for upon his arraignment for the hunting, he only answers to that indictment, and is not examined touching others; and besides, if he be indicted for the hunting, if there be evidence to convict him of the fact, he is convicted of felony before the indictment for concealment come; and if there be not evidence to convict him of the principal, how shall there be evidence to convict him of the concealment? 1 *H. H.* 659.

4. The next statute is in the 19th year of the same king, by which it is enacted, That no person, not having any park, chase or forest of his own, shall keep or cause to be kept any net, called deer-hays or buck-stalls, on pain of 10 l a month; to him who shall sue by action of debt: or, the justices in sessions may call before them any person suspected, and examine them; and if they be found in default, may commit them till they have found surety for payment of the forfeiture to the king; and the justices shall have the tenth part of such forfeiture for their labour. 19 *H.* 7. c. 11. Penalty of keeping nets for deer.

5. And by the same statute, no person shall stalk, nor cause any other to stalk, with any bush, or beasts, to any deer, except in his own ground, chase, forest, or park, without licence of the owner, master, or keeper; on pain of 10 l in like manner. Penalty of stalking to deer.

6. The next act is the 5 *El.* c. 21. which is re-enacted with some additions by the 3 *J.* c. 13. which is altered and explained by the 7 *J.* c. 13. the substance of all which put together is as follows; 10 l, or treble damages.

If any person shall by night or by day, wrongfully or unlawfully break or enter into any park impaled, or any other several grounds inclosed with wall, pale, or hedge, and used and kept for the keeping, breeding, and cherishing of deer, and wrongfully or unlawfully shall hunt, drive, or chase out, or take, kill, or slay any deer therein; and be thereof convicted at the assizes or sessions, upon indictment,

indictment, bill of complaint, information, or otherwise, at the suit of the king or of the party, he shall for every offence pay 10 l to the party grieved, or treble damages and costs, at the election of the party, to be assessed by the court; and shall find sufficient sureties for his good abearing for seven years, or continue in prison till he finds such sureties.

But on satisfaction of treble damages, the party may release the sureties within the seven years. Or if the person shall acknowledge his offence in open sessions, and that he is sorry therefore, and satisfy the party grieved, the court may discharge the recognizance.

But this shall not extend to any park or inclosed ground, hereafter to be made and used for deer, without the king's licence.

Guns, bows, and
nets to kill deer,
may be seized.

7. And by the said statute of the 3 J. c. 13. it is also enacted, that if any person not having lands or hereditaments of 40 l a year, or not worth in goods 200 l, shall use any gun or bow to kill deer; or shall keep any buck-stall or engine, unless he have grounds inclosed for keeping of deer; any person having 100 l a year may seize the same to his own use.

Selling deer.

8. Another statute is 1 J. c. 27. which enacts, that every person who shall sell, or buy to sell again, any deer, shall, on conviction at the assizes, or sessions, or before two justices out of sessions, forfeit for every deer 40 s, half to him that will sue, and half to the poor.

20 l,

9. The next act is 13 C. 2. c. 10. by which it is enacted, that if any person shall unlawfully course, kill, hurt, or take away any red or fallow deer, in any forest, chase, purlieu, paddock, wood, park, or other ground where deer are or have been usually kept, without consent of the owner, or person chiefly intrusted with the custody thereof; or shall be aiding or assisting therein; and shall be convicted thereof by confession, or oath of one witness, before one justice, in six months after the offence committed; he shall forfeit for every offence 20 l, half to the informer, and half to the owner of the deer, by distress; for want of sufficient distress, to be committed to the house of correction for six months to hard labour, or to the common gaol for one year; and not to be discharged thence, till he hath given sureties for his good behaviour for a year next after his enlargement.

Note; This act doth not appear to be limited to grounds inclosed only; altho' the statute of the 10 G. 2. c. 32. hereafter following seems to suppose it so.

10. The

10. The next act is the 3 *W. c.* 10. on which most of the convictions have been since that time; which (together with the alterations and additions made in and to the same by the 5 *G. c.* 15. 9 *G. c.* 22. and 10 *G. 2. c.* 32. is as followeth :

If any person shall unlawfully course, hunt, take in toyls, kill, wound, or take away, any red or fallow deer, in any forest, chase, purlieu, paddock, wood, park, or other ground inclosed, where deer are, have, or shall be usually kept, without the consent of the owner or person chiefly intrusted with the custody thereof; or shall be aiding or assisting therein; and shall be convicted (O) thereof, in 12 months after the offence, by confession, or oath of one credible witness, before one justice where the offence shall be committed, or the party apprehended: every such person so offending by unlawful coursing or hunting only, when no deer is taken, wounded, or killed, shall forfeit for every such offence 20 l, and in case any deer shall by such person or persons be wounded, taken in toyls or killed, such person or persons shall respectively forfeit for every such deer 30 l, to be levied by distress (P) upon the goods and chattels of the offender by warrant of such justice; one third to the informer, one third to the poor, and one third to the owner of the deer: for want of sufficient distress, such person shall be imprisoned (Q) for a year, and set in the pillory an hour on some market day in the next adjoining town to the place where the offence was committed, by the chief officer of such market town, or his under officer. s. 2.

Unlawfully] Where a man kills deer in pursuance of a supposed right which he has, he is not within the intent of this, nor of the other acts against deer stealing. L. Raym. 588.

In any forest, chase, purlieu, paddock, wood, park, or other ground inclosed, where deer are, have, or shall be usually kept] M. 13 G. 2. K. against Calcut and Monk. There was a conviction for deer stealing in a purlieu of the forest. Whereunto exception was taken, that it was not averred, that deer were usually kept in the purlieu, whereas by the statute that seems to be required. To this it was answered, That such averment could not extend to a purlieu, for a purlieu is a place where by law deer cannot be kept, it being disafforested as well with regard to all others as the owner; and the oath of the ranger is, to drive deer out of the purlieu into the forest: Secondly, that the averment as to forests, chases, and purlieus, is not made necessary by the act, for the words *where deer are usually kept* extend

extend only to ground inclosed; else the words *other ground* will make it necessary to aver, that the forest was inclosed, which is not the case in any part of *England*. And by the court, The answer is right in both respects. Another objection was, that it did not appear, but that the defendant was owner of the purlieu; in which case he had a right to chase the deer off his ground. But by the court, That would be matter of defence, and should be shewn on his part, according to the resolution (before mentioned) in the case of *K. and Bryan*. So the conviction was confirmed. *Str.* 1119.

Or other ground inclosed, where deer are, or shall be usually kept] *T. 1 An. 2. and Moore.* A conviction for killing deer was quashed, because it said only that he killed deer in a certain place where deer had been usually kept, and did not say inclosed. *L. Raym.* 791.

Aiding or assisting therein] On a conviction, the question was, whether he who lent dogs to another to hunt, was aiding and assisting therein, to wit, in the hunting: And by the opinion of three judges he was; but *Holt Ch. J.* was of a contrary opinion, for this being a penal law, shall be construed strictly; and if so, then he who lent the dogs could not be assisting in the act of hunting, and so not within the words of the statute, *aiding and assisting therein*, tho' he might be assisting thereunto. *2 Salk.* 542, 543.

And shall be convicted thereof] There ought to be a summons in this, and in all other like cases, to warrant a conviction; and that ought to give a reasonable time to appear in: but if the defendant hath appeared, it cures the want of a summons. *1 Salk.* 181, 383.

H. 3 G. K. and Simpson. The defendant was convicted for deer stealing; and the conviction set forth, that he had been summoned to appear before the justices; but it did not appear he ever was before them. Exception was taken to this, that as no appeal lies in this case, the justices should not have proceeded in the absence of the party, especially where it may end in a corporal punishment, as it may do here, for want of a distress. And at another day, on consideration, *Parker Ch. J.* delivered the resolution of the court: We are all of opinion, the offender may be convicted, without appearing. The statute is silent as to the method of proceeding, and the law of *England*, it is true, in point of natural justice, always requires the party charged with any offence to be heard before he be condemned

condemned in judgment; but that rule must have this exception, unless it is through his own default: were it otherwise, every criminal might avoid conviction. The law being so, the magistrate is bound to give some opportunity to the party to appear; and if upon such notice, he neither comes, nor sends a sufficient excuse, the magistrate may proceed to judgment. If this was not to be allowed, the consequence would be, that the offender would escape unpunished, because he would never appear purposely to be convicted; and that would be to make the execution of the law depend on the will of the offender.

There was another order of conviction, whereby it appeared, that the defendant made an attorney to defend for him: And by the court; We think that it is certainly good; for the offender may entrust his defence with another, and the justices cannot enforce him to appear in person. And the orders were confirmed. *Str.* 44.

[In 12 months after the offence] A conviction being returned on a certiorari, the objection was, that the conviction appeared to be a year after the day of the information; but it was held sufficient that the information be prosecuted within a year after the fact; for that is a good commencement of the suit, and it is from that the computation is made in all such cases. *1 Salk.* 383.

But by the Black act hereafter mentioned, this prosecution may be commenced at any time within three years after the offence. *9 G. c. 22. s. 13.*

[Oath of one credible witness] This must not be upon the single oath of the informer; and a conviction was quashed on that reason; divers convictions having been quashed on the same reason before. *L. Raym.* 1545. *Str.* 316.

In the case of *K. against Wilford and Savage, M. 5 G.* The defendants were severally convicted of deer stealing on this statute. Exception was taken that the persons on whose testimonies the defendants were convicted, appeared to be of the same parish where the facts were committed, and so might be intitled to part of the penalty. But it was over-ruled by the court; because the justice hath sworn them to be credible witnesses, and it doth not appear that they were of the poor of the parish. *Viner.* Deer stealing. *A.* 24.

So in the case of *K. and Mitter, H. 7 G. 2.* The offence was committed in the parish of *Barking*. The witness was an inhabitant of the same parish. It was objected, that part of the penalty being given to the poor

of that parish, the witness was interested, and therefore incompetent. It was answered, that if indeed the penalty had been given to the overseers of the poor of the parish, the objection might have had some weight in it, for then it would have been for the benefit of the rich as well as of the poor; but here it is given merely by way of bounty to the poor, and the rest of the inhabitants can have no benefit by it. And the court was of opinion, that the objection was fully answered; and the conviction was confirmed. 2 *Barnardist.* 383.

Every such person so offending] A conviction of two persons was removed, wherein judgment was given, that each should forfeit 30 l. It was objected, that there ought to be but one 30 l forfeited. But not allowed: For the words of the act are, that they shall *respectively* forfeit 30 l, and this penalty is not in nature of a satisfaction to the party grieved, but a punishment on the offender; and crimes are several, tho' debts be joint. 1 *Salk.* 182. *H. 10 An. 2.* against *King.*

To be levied by distress] Sale of the goods is not mentioned here in the statute; yet nevertheless where the law gives a distress for a publick benefit, the officer may sell. 1 *Salk.* 379.

By warrant of such justice] Altho' the constable is not appointed to execute this warrant, nor is so much as named in the clause; yet he is bound to obey the warrant, and is indictable if he does not: but he need not return the warrant itself, for that is not required, and it may be necessary to keep it for his own justification: but he must either return that, or certify what he has done upon it. 1 *Salk.* 381.

One third to the informer, &c.] The penalty need not be distributed by the conviction; viz. 10 l to the informer, 10 l to the poor, and 10 l to the party grieved; for the judgment in such cases seldom mentions a distribution: it is enough to say, that he is convicted, and hath forfeited 30 l according to the statute. 1 *Salk.* 383.

For want of sufficient distress] If the justice finds there is nothing to distrain, then he must make a record thereof, and make an adjudication for corporal punishment; but the offender is not to pay part, and suffer corporally for the residue. *L. Raym.* 546, 1195, 6.

H. 6 G. K. and Whitlock. The defendant was committed for want of distress; and the warrant set forth,

that it had been certified to the justice by the constable, that there was not sufficient distress. It was objected that there ought to have been a warrant to levy, and a return to that, that there was no distress; it may be, the constable only told him so. But by the court, The warrant is well enough; for the word *certified* imports it to be in a legal manner. *Str.* 263.

And then the act goes on thus:

Any owner of deer in any inclosed ground, or any person acting under him, may resist such offenders in the same manner as if the fact had been committed in an ancient chase or park. *3 W. c. 10. s. 5.*

And as to the case of venison's being found in a man's possession, it is further enacted, that the constable, by a justice's warrant, shall enter into and search (R) in such manner and with such power as in case where goods are stolen or suspected to be stolen, the houses, outhouses, or other places belonging to such houses of suspected persons; and if any venison or skin of any deer, or toys, shall there be found, he shall apprehend the offender, and carry him before a justice; and if such person do not give a good account how he came by the same, such as shall satisfy the said justice, or else shall not in some convenient time to be set by the said justice, produce the party of whom he bought the same, or some other credible witness to depose upon oath such sale thereof, he shall be convicted by the said justice of such offence, and thereupon shall be subject to the forfeitures and penalties hereby inflicted for the killing of one deer. *3 W. c. 10. s. 3.*

And by the 9 G. c. 22. commonly called the Black act, any justice may issue his warrant for this purpose; and if any venison or skin of any deer, shall be found in the custody of any person, and it shall appear that such person bought such venison or skin of any one who might be justly suspected to have unlawfully come by the same, and doth not produce the party of whom he bought it, or prove upon oath the name and place of abode of such party, then the person who bought the same shall be convicted of such offence by any justice of the peace, and shall be subject to the penalty above inflicted for killing one deer. *9 G. c. 22. s. 11, 17.*

After conviction, the constable or prosecutor may detain in custody the offender, if he shall not presently pay the money due on conviction, during such reasonable time as a return may be conveniently made to the warrant of distress, so as such detainer exceed not two days. *3 W. c. 10. s. 4.*

And moreover, the person convicted, before he shall be discharged out of custody, shall become bound to the person against whom the offence shall be committed, in 50*l* for his future good behaviour, and that he shall not offend in like manner; and upon refusal shall be committed to gaol until the bond be given: And if he shall be afterwards convicted of any offence in the said statute of 3*W. c.* 10. the bond shall be forfeited, and the penalty be recovered with full costs in any court at *Westminster*, over and above the forfeiture, and to be distributed as the forfeitures. 5*G. c.* 15. *f.* 4.

All this being done, the justice shall certify a true copy of the conviction under his hand and seal, to the next quarter sessions, there to be kept among the records. 10*G. 2. c.* 32. *f.* 8.

And no *certiorari* shall be allowed to remove any conviction, or other proceeding thereupon, unless the party, before the allowance thereof be bound to the prosecutor in 50*l*, with such sureties as the justice shall think fit, to pay in a month after the conviction confirmed, or a *procedendo* granted, full costs and damages, to be ascertained upon his oath; and at the same time become also bound to the justice with sufficient sureties, in the penalty of 60*l*, with condition to prosecute the *certiorari* with effect, and to pay to the justice the forfeitures due by the conviction, or to render to the justice the person convicted within a month after the conviction shall be confirmed, or a *procedendo* granted: and in default thereof, the justice may proceed to the execution of the conviction. 3*W. c.* 10. *f.* 6. 5*G. c.* 15. *f.* 1.

Or, after delivering to the justice the rule by which the conviction shall be confirmed, he may proceed, as if a *procedendo* had been granted. 5*G. c.* 15. *f.* 2.

H. 6 G. K. and Whitlock. The defendant being brought up from *Newgate* by *habeas corpus*, it appeared upon the return, that he was committed for deer stealing, as the statute of the 3*W. c.* 10. directeth, not having sufficient distress; and that this was done by one justice under the statute of the 5*G.* And exception was taken to the warrant, that it doth not appear, the conviction was ever confirmed in this court, or that the rule for confirmation was delivered to the justice, and therefore the justice could not proceed to execution: for the statute gives to the justice a jurisdiction after confirmation, which he had not before; and therefore he ought to shew every thing requisite to found his jurisdiction upon. But by the court,
We

We take notice of our own records, and by them it appears that the conviction is confirmed: and the statute doth not give the justice a new jurisdiction, but only revives his old one, which was suspended by the certiorari. And the defendant was remanded. *Str.* 263.

Moreover, by the said act of 5 G. c. 15. it is enacted, that if any keeper or other officer of any park, or place where deer are usually kept, shall be convicted on the said statute of the 3 W. for killing or taking away any red or fallow deer, or being aiding therein, without consent of the owner, or person chiefly intrusted with the custody thereof; he shall forfeit 50 l for each deer, to be distributed as the other forfeitures; to be levied by distress: for want of distress, to be imprisoned for three years, and be set in the pillory two hours on some market-day in the next town to the place where the offence was committed, by the chief officer of such market town, or his under officer. *f.* 5.

And it is further enacted, that if any person shall at any time pull down or destroy, or cause to be pulled down or destroyed, the pale or walls of any park, forest, chase, purlieu, paddock, wood, or other ground inclosed, where any red or fallow deer shall be then kept, without the consent of the owner, or person chiefly intrusted with the custody thereof; and shall be convicted thereof before orle justice, by confession, or oath of one witness, he shall suffer the said forfeitures of the 3 W. for killing one deer. 5 G. c. 15. *f.* 6.

And any person sued for any thing done either on the 3 W. c. 10. or on this act, may plead the general issue; and if he recovers, shall have treble costs. 5 G. c. 15. *f.* 3.

11. Next follows the statute of the 5 G. c. 28. by which it is enacted, that if any person shall enter into any park, paddock, or other inclosed ground where deer are usually kept, and wilfully wound or kill any red or fallow deer there, without consent of the owner of the ground, or of the person intrusted with the custody thereof, or shall be aiding or assisting therein; and shall be convicted thereof before the judge of assize, upon indictment, by verdict or confession,—he shall be transported for seven years: Transportation
for offences in
places inclosed.

But not to be prosecuted likewise on any of the former acts, all which nevertheless shall be of force.

12. Thus stood the laws, till the great insolenecies of the *Waltham Blacks* made a further provision necessary, Felony without
benefit of clergy.

by that famous act of the 9 G. c. 22. from them usually called the *Black Act*, which hath created more new felonies than any other statute whatsoever: which, with regard to the subject before us, doth enact as follows:

If any person or persons, being armed with swords, fire arms, or other offensive weapons, and having his or their faces blacked, or being otherwise disguised, shall appear in any forest, chase, park, paddock, or grounds inclosed with any wall, pale, or other fence, wherein any deer have been or shall be usually kept, or shall unlawfully and wilfully hunt, wound, kill, destroy, or steal any red or fallow deer: or if any person or persons (whether armed and disguised or not) shall unlawfully and wilfully hunt, wound, kill, destroy, or steal any red or fallow deer, fed or kept in any places in any of the king's forests or chases, which are or shall be inclosed with pales, rails, or other fences; or in any park, paddock, or grounds inclosed, where deer have been or shall be usually kept; or shall forcibly rescue any person being lawfully in custody of any officer or other person, for any the said offences; or shall by gift or promise of money, or other reward, procure any to join him or them in any such unlawful act: every person so offending, being thereof lawfully convicted (in any county in *England*) shall be guilty of felony without benefit of clergy; but not to work corruption of blood, nor forfeiture of lands or goods.

Concerning the manner of bringing the offender to justice, and other particulars relating thereto, it is proper to refer from hence to the title *Black Act*; where these offences, together with the other offences in the said act, are treated of more at large.

Transportation
for a second of-
fence in places
uninclosed.

13. It is to be observed, that this act of the 9 G. c. 22. extends only to killing and wounding deer in places *inclosed* (except the offender be withal armed and disguised); and therefore the said offence in places *uninclosed* remains as it was before the making the said act: But by the statute of 10 G. 2. c. 32. a second offence against the former acts is made transportation: Which, after having recited, that whereas the abovesaid act of the 9 G. c. 22. extends not to hunting or taking deer in open forests or chases, but only in such as are inclosed, and offences in uninclosed places are only punishable by the 3 W. c. 10. which inflicts only a pecuniary punishment, which is not sufficient to deter offenders,——doth therefore enact, That if any person who shall be con-
victed

viſited of unlawfully courſing, hunting, taking in toils, killing, wounding, or taking any red or fallow deer, in any open or unincloſed foreſt or chafe, where deer are uſually kept, ſhall be guilty of a ſecond offence of the like nature, and ſhall be thereof lawfully convicted on indictment or information; he ſhall be transported for ſeven years; and if he returns within the time, he ſhall be guilty of felony without benefit of clergy. And the clerk of the peace ſhall at the requeſt of the proſecutor, or of any perſon on his majeſty's behalf, certify to the aſſizes a tranſcript under his hand and ſeal, briefly and in few words containing the effect and tenor of the firſt conviction (kept amongſt the records); which certificate ſhall be ſufficient proof of the firſt conviction. 10 G. 2. c. 32. ſ. 7, 8.

14. Moreover, by the ſaid act of the 10 G. 2. c. 32. Beating the keeper, tranſportation If any perſon armed ſhall come into any foreſt, chafe, or park, wherein deer are uſually kept, (whether incloſed or not) with an intent to courſe, hunt, take in toils, kill, wound, or take away any red or fallow deer, and ſhall there unlawfully beat or wound any keeper or page of any ſuch foreſt, chafe or park, their ſervants or aſſiſtants in the execution of their office, and be thereof lawfully convicted he ſhall be transported for ſeven years. ſ. 9.

15. Whereas the burning and deſtroying of goſs, furze, Deſtroying covert for deer. and fern in foreſts and chates, doth deſtroy the cover neceſſary for the preſervation of the deer and game there; therefore if any perſon not having a right or legal licence to do the ſame, ſhall ſet fire to, burn, or deſtroy (or be aiding therein) any goſs, furze, or fern in any foreſt or chafe, without conſent of the owner or perſon chiefly intruſted with the cuſtody of ſuch foreſt or chafe, or of ſome part thereof, and being brought before a juſtice ſhall be thereof convicted by confeſſion, or oath of one witneſs, or on view of the juſtice, he ſhall forfeit not exceeding 5 l, nor leſs than 40 s, half to the informer, and half to the poor; if not forthwith paid, to be levied by diſtreſs; and if no ſufficient diſtreſs can be found, the juſtice ſhall commit him to the common gaol, for any time not exceeding three months, nor leſs than one month. 28 G. 2. c. 19. ſ. 3.

II. Of bares.

It is to be remembred, that I have already, under the third part of this title, treated of theſe particulars, which

are common to this with other species of the game, as to destroying the same by unqualified persons; I here take notice of such things as belong to hares only, and which for the most part seem generally to concern all persons, whether qualified or not.

Tracing in the snow.

1. No person of what estate, degree, or condition he be, shall trace, destroy, and kill any hare in the snow, with any dog, bitch, bow, nor otherwise. And the sessions or leet may inquire hereof; and after inquisition found, they shall for every hare so killed, cels upon every offender 6s 8d, to be forfeited to the king, if in the sessions; and to the lord of the leet, if in the leet. 14 & 15 H. 8. c. 10.

And by the 1 J. c. 27. Every person who shall trace or course any hares in the snow; shall, on conviction before two justices, by confession, or oath of two witnesses, be committed to gaol for three months, unless he pay to the churchwardens for the use of the poor, 20s for every hare; or after one month after his commitment become bound by recognizance with two sureties in 20l apiece, before two justices, not to offend again in like manner. f. 2.

Snares and harepipes.

2. And by the said last mentioned act, every person who shall at any time take or destroy any hares, with harepipes, cords, or any such instruments or other engines; shall forfeit for every hare 20s in like manner. 1 J. c. 27. f. 2.

And by the 22 & 23 C. 2. c. 25. f. 6. If any person shall be found or apprehended setting or using any snares, harepipes, or other like engines, and shall be thereof convicted, by confession, or oath of one witness, before one justice, in one month after the offence; he shall give to the party injured such damages, and in such time, as the justice shall appoint, and shall pay down presently to the overseers for the use of the poor, such sum not exceeding 10s, as the justice shall appoint; which if he shall not do, the justice shall commit him to the house of correction not exceeding one month.

Killing hares in the night, or on Sunday or Christmas day.

3. By the 9 An. c. 25. If any person whatsoever shall take or kill any hare in the night time; he shall on conviction before one justice, on oath of one witness, forfeit 5l, half to the informer, and half to the poor, by distress; for want of distress, to be sent to the house of correction for three months for the first offence, and for every other offence four months. f. 3.

And

And by the 13 G. 3. c. 80. If any person shall knowingly and wilfully kill, take, or destroy, or use any gun, dog, snare, net, or other engine, with intent to kill, take or destroy, any hare in the night, that is to say, between the hours of 7 at night and 6 in the morning from the 12th day of October to the 12th day of February, and between the hours of nine at night and 4 in the morning from the 12th day of February to the 12th day of October; or, in the day time, upon a Sunday or Christmas day: he shall, on conviction on oath of one witness before one justice, forfeit for the first offence not exceeding 20 l, nor less than 10 l; and for the second offence not exceeding 30 l, nor less than 20 l. And the justice shall cause the conviction to be made out in the manner and form following: *Be it remembered, That on the ——— day of ——— in the year of our lord ——— A. B. is convicted before me ——— one of his majesty's justices of the peace for the county of ———* (specifying the offence, with the time and place where the same was committed, and also specifying that it was the first or second offence against this act, as the case shall be). *Given under my hand and seal the day and year aforesaid.* Which conviction the said justice shall cause to be fairly written on parchment, and returned to the next sessions to be filed by the clerk of the peace; who shall, upon application to him made, deliver copies thereof, on payment of 1 s for each copy.

But in case any information shall be made upon oath as aforesaid before a justice against an offender, and it shall appear that such offender hath already been convicted of a first and second offence; in such case the justice shall commit him to the common gaol or house of correction till the next general quarter sessions, unless he shall have entered into recognizance with two sufficient sureties to appear at such sessions, then and there to be tried by indictment for the said offence; and such justice shall also bind over the informer to prosecute the said offender by indictment as aforesaid: And if upon such indictment, the offender shall be convicted; he shall forfeit and pay in court the sum of 50 l; and if he shall neglect or refuse to pay the same, he shall be committed to the common gaol or house of correction for not less than 6 nor more than 12 calendar months, unless such penalty shall be sooner paid; and the said offender shall, if the justices think proper, be once publicly whipped at the expiration of such commitment, in the town or place where such gaol

gaol or house of correction shall be, between the hours of twelve and one in the day.

Provided, that no proceedings shall be upon this act, unless information on oath be made before a justice, within one calendar month after the offence committed.

The said forfeitures for the first and second offence, and also for the third offence on conviction at the sessions, together with the costs and charges previous to and attending such conviction (to be ascertained by the justice or justices before whom the offender shall be convicted), shall be forthwith paid, half to the informer and half to the poor. And if such person shall refuse or neglect to pay the same, or to give security for the payment thereof, such justice or justices shall by their warrant cause the same to be levied by distress: And the said justice or justices may order such offender to be detained in safe custody, until return may conveniently be had to the warrant of distress, unless the party shall give sufficient security, by recognizance or otherwise to the satisfaction of such justice or justices, for his appearance before the said justice or justices on the day appointed for the return of the said warrant, not exceeding 7 days from the taking such security: And if upon such return, no sufficient distress can be had, the said justice or justices shall commit the offender to the common gaol or house of correction for 3 calendar months, unless the forfeiture shall be sooner paid; or until such offender, thinking himself aggrieved by such conviction, shall give notice to the informer, that he intends to appeal to the next sessions, and shall enter into a recognizance before a justice with two sufficient sureties, conditioned to try such appeal, and to abide the order of, and pay such costs as shall be awarded by the justices at such sessions; which notice shall be not less than 14 days before the trial of the appeal. And the justices at such sessions, on proof of such notice and recognizance, shall determine the appeal in a summary way, and award costs to either party as they shall judge proper.

And if the offender dwells in another county, the justice or justices before whom the information or indictment was made, may direct their warrant of apprehension and of distress to any constable where the offence was committed, to be by him carried to a justice near residing where the offender dwells, to be signed by him on the back of the said warrant, upon proof on oath of the handwriting of the justice who first granted the warrant; which indorsement shall be sufficient authority for the constable

constable of the place where he dwells, or where his goods and chattels are, or for the constable who brings the warrant to be indorsed, to apprehend and convey the offender before the justice who first granted the warrant or any other justice of that county where the offence was committed, or for such constable to levy the penalty by distress; and also, in case where no sufficient distress can be had, to convey the offender before the justice who first granted the warrant of distress or any other justice of that county where the offence was committed, to be dealt with according to law. And the justice who indorsed the warrant shall direct the constable or other person making the distress, to deliver over the money levied to the justice who first granted the warrant; and if such constable or other person shall neglect or refuse to pay such sum, or deliver over all proceedings upon such distress or warrant of apprehension, the justice who first granted the warrant, or the justice who indorsed it, may commit him to the common gaol or house of correction for six months, or till the money shall be paid, and the proceedings delivered over.

And no order made, or any other proceedings upon this act, shall be quashed for want of form, or removed by certiorari or other writ into any of the courts of record at Westminster.

[Note, in respect to the third offence, here seems to be an inconsistency. The former part of the act says, if the offender shall not, upon conviction by indictment at the sessions, pay in court the penalty of 50 l; he shall be committed to the gaol or house of correction for not less than 6 months nor more than 12.—The latter part of the act says, the said penalty shall be levied by distress; and if no distress can be had, the offender shall be committed to the gaol or house of correction for *three* months; with power of appealing to the sessions then next following, with other circumstances seemingly absurd.]

4. Every person who shall shoot at, kill, or destroy any *Shooting hare.* hare, with any gun or bow, shall on conviction before two justices, by confession, or oath of two witnesses, be committed to gaol three months, unless he pay to the churchwardens for the use of the poor 20 s for every hare; or after one month after his commitment become bound by recognizance with two sureties before two justices in 20 l apiece, not to offend again in like manner.

The

The recognizance to be returned to the next sessions.
1 *J. c. 27. f. 2.*

Buying and selling hares.

5. Every person who shall sell, or buy to sell again, any hare, shall, on conviction at the assizes or sessions, or before two justices out of sessions, forfeit for every hare 10 s, half to the poor, and half to him that will sue.
1 *J. c. 27. f. 4.*

Taking hares in warrens.

6. By the Black Act before mentioned, if any person, armed and disguised, shall appear in any warren or place where hares are usually kept, or unlawfully rob any such warren; or (whether armed and disguised or not) shall rescue any person in custody for either of the said offences, or procure any to join with him in any such unlawful act; he shall be guilty of felony without benefit of clergy.

III. Conies.

Trespassers in warrens may be resisted.

1. If any warreners shall find any trespassers wandering within his liberty, intending to do damage therein, and that will not yield themselves after hue and cry made to stand unto the peace, but do flee, or defend themselves; altho' the warrener or his assistant, do kill such offenders, they shall not be troubled upon the same. 21 *Ed. 1. f. 2.*

Hunting in a warren by night or disguised.

2. When information shall be made of unlawful hunting in a warren by night, or with painted faces, to any of the king's counsel, or to a justice of the peace, of any person suspected, he may make a warrant to bring such person before himself or any other of the said counsel or justices; and if such person shall conceal the said hunting or any of his accomplices, it shall be felony; but if he confesseth, it shall be but trespass finable at the sessions.
1 *H. 7. c. 7.*

Hunting by night in a warren inclosed.

3. If any person shall in the night time enter into any grounds inclosed, and used for keeping of conies, and hunt, drive out, take, or kill any conies; he shall, on conviction at the suit of the king or of the party, at the assizes or sessions, on indictment, bill, or information, or otherwise, be imprisoned 3 months, and pay to the party grieved treble damages and costs, and find sureties for his good abearing for seven years, or continue in prison till he does: But this shall not extend to any grounds to be inclosed and used for conies after the making of this act, without the king's licence. 3 *J. c. 13.*

4. If any person shall at any time enter wrongfully into any warren or ground lawfully used or kept for the breeding or keeping of conies, whether it be inclosed or not; and there shall chase, take, or kill any conies; and shall be thereof convicted in one month after the offence, before one justice, by confession, or oath of one witness; he shall yield to the party grieved treble damages and costs, and be imprisoned 3 months, and after till he find sureties for his good abearing. 22 & 23 C. 2. c.

Killing in places inclosed or uninclosed, by night or day.

25. f. 4.

5. If any person shall wilfully and wrongfully, in the night time, enter into any warren or grounds lawfully used or kept for the breeding or keeping of conies, altho' the same be not inclosed, and shall then and there wilfully and wrongfully take or kill, in the night time, any coney, against the will of the owner or occupier thereof; or shall be aiding and assisting therein; and shall be convicted thereof at the assizes: he shall be transported for seven years, or suffer such other lesser punishment by whipping, fine, or imprisonment, as the court shall award. Provided, that conies may be taken, in the day time, on the sea or river banks in the county of Lincoln, so far as the tide shall extend, or within one furlong of the said banks; and the person taking them shall not be obliged to make satisfaction for damage, unless the same shall exceed the sum of 1 s. 5 G. 3. c. 14.

If by night, further penalty of transportation.

f. 6, 7, 8, 9.

6. By the Black Act abovementioned, If any person, being armed and disguised, shall appear in any warren or place where conies are usually kept, or unlawfully rob any such warren; or (whether armed and disguised or not) shall rescue any person in custody for such offence, or procure any person to join him therein; he shall be guilty of felony without benefit of clergy.

Felony without benefit of clergy.

7. No person shall kill or take in the night any conies upon the borders of warrens, or other grounds lawfully used for the breeding or keeping of conies (except the owner or possessor of the ground, or persons employed by them); on pain that the offender, on conviction in one month after the offence, before one justice, by confession, or oath of one witness, shall give to the party injured such damages and in such time as shall be appointed by the justice, and over and above pay down presently to the overseers for the use of the poor such sum not exceeding 10 s, as the justice shall appoint; which if he shall not do, the justice shall commit him to the house of correction.

Killing in the night, in the borders of warrens.

rection for such time as he shall think fit, not exceeding one month. 22 & 23 C. 2. c. 25. s. 5.

The statute saith, *upon the borders of warrens*; but if they are out of the warren, no person hath any property in them, and a man may justify killing them if they eat up his corn; but no action lies against the owner of the warren. 5 Co. 104. *Read, Game.*

So a person that hath a right of common may kill them, when they are out of the warren and destroy the common; but he cannot have an action on the case against the lord, for that would be to create a multiplicity of actions. *Cro. El.* 548. *Cro. Ja.* 195. *Cro. Car.* 388.

For a man cannot have an action for another man's conies breaking into his ground, because they are no longer the other's than while they are in the warren or place where he hath a right to keep them; so that no violation hereby arises to the property of one man by the beasts of another; but the conies, being in their natural liberty, may be lawfully killed by the owner of the soil. 2 *Bac. Abr.* 614.

But if the lord hath a right to put conies upon the common, and by an excess in the number surcharges the common, and by the number of burrows made by the conies prevents the commoner's cattle from depasturing the common; an action in such case is the proper remedy, and the tenant may not of his own accord fill up the burrows and remove the nuisance. As in the case of *Cooper v. Marshall*, *E.* 30 G. 2. By lord *Mansfield* Ch. J. The question in this case is not, whether the act of the lord be or be not hurtful, or how far it may be so: but the question turns upon the remedy, whether it is abatable, whether the commoner can do himself justice. It may be prejudicial to the commoner, yet not injurious; it may be both prejudicial and injurious, yet not abatable. The lord, by his grant of common, gives every thing incident to the enjoyment of it, as ingress, egress, and the like: and thereby authorizes the commoner to remove every obstruction to his cattle's grazing the grass which grows upon such a spot of ground: because every such obstruction is directly contrary to the terms of the grant. A hedge, a gate, or a wall, to keep the commoner's cattle out, is inconsistent with a grant which gives them a right to come in. But the lord still remains owner of the soil; and is not debarred from exercising any act of ownership. The commoner has no right to meddle with the

the soil. In the present case, the lord has done nothing contrary to the grant. He hath not obstructed the commoner from entering and putting in his cattle. The lord has a right to put conies upon the common. The conies themselves naturally make the burrows. So that they are incident to the right of putting on the conies. If the lord surcharges, the commoner is injured in his right of common, it is true: But what is the commoner's remedy? Not, to abate; not, to be his own judge, in a complicated question, which may admit of nicety to determine. There is a certain line to be drawn. The lord has a right so far, but no further. Yet the commoner cannot destroy or drive off the conies; nor, consequently can he destroy the burrows, which is in effect destroying the conies. — By Mr. Justice *Denison*: Upon the record of this case, it must be taken, that the plaintiff was owner of the soil, and had a free warren; and that there is not sufficient common left, by the increase of the conies, for the use of the commoner. The question then is, whether the commoner shall be intrusted to destroy the estate of the lord, in order to preserve his own right of common. This would be to constitute himself judge in his own cause: No, let him take his proper remedy. A coney-burrow is not of its own nature a nuisance: On the contrary, it is essential to a free warren. Therefore the nuisance depends upon the number of them: And you can, at the utmost, only abate so much of the thing as is a nuisance. You cannot destroy the whole (which is the right here claimed); but only so much of the thing as makes it a nuisance. — By Mr. justice *Fryer*: This justification is clearly bad. It is founded on a claim of right which cannot be maintained. It is admitted, that a commoner cannot in this case destroy the conies: Consequently, he cannot destroy the burrows; for the effect is, destroying the conies. If the lord has exceeded the bounds of his right, the law is to determine the quantum of such excess; and to the law the commoner must resort for his remedy, if he is aggrieved. *Burrow.*

Mansfield. 252.

8. If any person shall be found or apprehended setting or using any snares or other like engines, for taking of conies, and shall be thereof in like manner convicted, he shall give to the party grieved such damages, and in such time as the justice shall appoint, and pay down presently to the overseer for the use of the poor such sum not exceeding 10s, as the justice shall appoint; which if he shall not

Setting snares

not do, the justice shall commit him to the house of correction not exceeding one month. 22 & 23 C. 2. c. 25. s. 6.

Keeping engines.

9. If any person not having lands or hereditaments of 40 l a year, or not worth in goods 200 l, shall use any gun or bow to kill conies, or shall keep any ferrets or coney dogs (except he have grounds inclosed for keeping of conies, the increasing of which shall amount to 40 s a year to be let, and except warreners in their warrens); in such case, any person having 100 l a year may seize the same to his own use. 3 J. c. 13. s. 5.

VI. Laws concerning the winged game in particular.

I. Of hawks and hawking.

II. Of swans.

III. Of partridges and pheasants.

IV. Of pigeons.

V. Of wild ducks, wild geese, and other water fowl.

VI. Of beath fowl, grouse, and bustards.

VII. Of herons.

VIII. Of other fowl.

I. Of hawks and hawking.

What hawks a man shall bear.

1. No man shall bear any hawk of the breed of *England*, called a nyesse, goshawk, tassel, laner, laneret, or faulcon, on pain of forfeiting his hawk to the king. And if he bring any of them over sea, he shall bring a certificate thereof from the officer of the port; on the like pain of forfeiting the same to the king. And the person that bringeth any such hawk to the king, shall have a reasonable reward of the king, or else the hawk for his labour. 11 H. 7. c. 17.

Persons finding a hawk.

2. Every person who findeth a faulcon, tercelet, laner or laneret, or other hawk that is lost, shall presently bring the same to the sheriff; and the sheriff shall make proclamation in all the good towns in the county, that he hath such an hawk in his custody; and if he is challenged in four months, the owner shall have him again, paying the costs;

costs: if he is not challenged in four months, the sheriff shall have him, making gree to him that took him, if he be a simple man; but if he be a gentleman, and of estate to have the hawk, then the sheriff shall redeliver to him the hawk, taking of him reasonable costs for the time that he had him in his custody. 34 Ed. 3. c. 22.

3. And if any man steal any hawk, and the same carry away, not doing the ordinance aforesaid; it shall be done of him as of a thief, that stealeth a horse or other thing. 37 Ed. 3. c. 19. That is, he shall be guilty of felony, but shall have his clergy. 3 Inst. 98. Stealing a hawk.

4. If any person shall take away any hawks or their eggs, by any means unlawfully, out of the woods or ground of any person; and be thereof convicted at the assizes or sessions, on indictment, bill, or information, at the suit of the king or of the party; he shall be imprisoned three months, and shall pay treble damages; and after the three months expired, shall find sureties for his good abearing for seven years, or remain in prison till he doth. 5 El. c. 21. s. 3. Taking hawks or eggs out of the woods.

But by a more ancient statute, no man shall take any eyre, falcon, gohawk, tassel, laner, or laneret, in their warren, wood, or other place; nor purposely drive them out of their coverts accustomed to breed in, to cause them to go to other coverts to breed; nor slay them for any hurt done by them: on pain of 10l, half to him that will sue before the justices of the peace, and half to the king. 11 H. 7. c. 17.

And no manner of person, of what condition or degree he be, shall take or cause to be taken, on his own ground or any other man's, the eggs of any falcon, gohawk, or laner, out of the nest; on pain (being convicted thereof before the justices of the peace) of imprisonment for a year and a day, and fine at the king's will; half to the king, and half to the owner of the ground where the eggs were taken. *id.*

5. If any manner of person shall hawk in another man's corn after it is eared, and before it is shocked; and be convicted at the assizes, sessions, or leet; he shall forfeit 40s, to the owner: And if not paid in ten days, he shall be imprisoned for a month. 23 El. c. 10. Hawking in corn.

II. Of swans.

1. No person (other than the king's son) unless he have lands of freehold to the value of five marks a year, shall Qualification to keep swans.

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shall

shall have any mark or game of swans ; on pain of forfeiting the swans, half to the king, and half to any person (so qualified) who shall seize the same. 22 Ed. 4. c. 6.

Stealing swans marked.

2. It is felony to take any swans that be lawfully marked, tho' they be at large. *Dalt. c. 156.*

Swans unmarked.

3. And as to swans unmarked ; if they be domestical or tame, that is, kept in a moat, or in a pond near to a dwelling house, to steal such is also felony. *Dalt. c. 156.*

So it seemeth of swans unmarked, so long as they keep within a man's manor, or within his private rivers ; or if they happen to escape from thence, and be pursued and taken, and brought in again. *id.*

But if swans that are unmarked shall be abroad, and shall attain to their natural liberty, then the property of them is lost ; and so long, felony cannot be committed by taking them. *id.*

And yet such unmarked and wild swans the king's officers may seize (being abroad) for the king's use, by his prerogative. Also, the king may grant them, and by consequence another may prescribe to have them, within a certain precinct or place. *id.*

Swans eggs.

4. Every person who shall take the eggs of any swans out of the nest, or wilfully spoil them in the nest ; and shall be convicted thereof before two justices, by confession, or oath of two witnesses ; shall be committed to gaol three months, unless he pay to the churchwardens for the use of the poor, 20 s for every egg ; or after one month of his commitment, become bound by recognizance with two sureties in 20 l apiece, before two justices, never to offend again in like manner ; which recognizance shall be returned to the next sessions. 17 c. 27. s. 2.

But by a more ancient statute, no person shall take or cause to be taken, on his own ground or any other man's, the eggs of any swan ; on pain (on conviction before the justices of the peace) of imprisonment for a year and a day, and fine at the king's will, half to the king, and half to the owner of the swans. 11 H. 7. c. 17.

III. Of partridges and pheasants.

Partridges and pheasants are birds of warren, and the law seems peculiarly to protect them ; as appears by what follows :

1. By

1. By the 11 *H. 7. c. 17.* it is enacted, that no person of what condition he be, shall take or cause to be taken, any pheasants or partridges by nets, snares, or other engines, out of his own warren, upon the freehold of any other person, without the special licence of the owner or possessor of the same; on pain of 10 l, half to him that shall sue, and half to the owner or possessor of the ground where they shall be taken.

Taking them in another man's ground.

2. Every person who shall shoot at, kill, or destroy any pheasant or partridge, with any gun or bow; or shall take, kill, or destroy them with setting dogs or nets, or with any manner of nets, snares, engines, or instruments whatsoever; or shall take their eggs out of the nest, or spoil them in the nest; shall on conviction before two justices, by confession, or oath of two witnesses, be committed to gaol three months, unless he pay upon conviction to the churchwardens for the use of the poor, 20 s for every pheasant, partridge, or egg; or after one month after his commitment, become bound by recognizance with two sureties, before two justices, in 20 l each, not to offend again in like manner. The recognizance to be returned to the next sessions. 1 *J. c. 27. s. 2.*

Taking them with dogs, nets, or engines; or their eggs.

And by the 7 *J. c. 11.* Every person who shall take, kill, or destroy, any pheasant or partridge, with setting dogs and nets, or otherwise with any manner of nets, snares, or engines, shall, on conviction before two justices, by confession, or oath of one witness, be committed to gaol for three months, unless he forthwith pay to the churchwardens or overseers 20 s for every pheasant or partridge; and further to become bound by recognizance of 20 l before one justice, that he shall not thereafter kill or destroy any pheasant or partridge. The recognizance to be nled at the next sessions.

3. Every person who shall sell, or buy to sell again, any partridge or pheasant (except they be reared and brought up in houses, or brought from beyond sea); shall on conviction at the assizes or sessions, or before two justices out of sessions, forfeit for every partridge 10 s, and for every pheasant 20 s, half to him that will sue, and half to the poor. 1 *J. c. 27. s. 4.*

Selling or buying.

4. By the 23 *El. c. 10.* If any person, of what estate, degree, or condition soever, shall take, kill or destroy any pheasants or partridges in the night time; and be thereof convicted at the assizes, sessions, or leet; he shall forfeit for every pheasant 20 s, and for every partridge 10 s, half to him that shall sue, and half to the lord of the manor, unless

Taking in the night, or on a Sunday or Christmas day.

unless such lord shall license or procure the said taking or killing, in which case the said half shall go to the poor, to be recovered by any one of the churchwardens; and if not paid in 10 days after conviction, he shall be imprisoned for one month: And moreover, besides such forfeiture and imprisonment, he shall give bond to some justice of the peace, with good sureties, not to offend again in like manner for the space of two years.

By the 9 *An. c.* 25. If any person whatsoever shall take or kill any pheasant or partridge in the night time; he shall on conviction before one justice, on oath of one witness, forfeit 5 l, half to the informer, and half to the poor, by distress; for want of distress, to be sent to the house of correction for three months for the first offence, and for every other offence four months.

And by the 13 *G. 3. c.* 80. If any person shall knowingly and wilfully kill, take, or destroy, or use any gun, dog, snare, net, or other engine, with intent to kill, take, or destroy any pheasant or partridge in the night, that is, between the hours of 7 at night and 6 in the morning from the 12th day of October to the 12th day of February, and between the hours of 9 at night and 4 in the morning from the 12th day of February to the 12th day of October; or, in the day time, on a Sunday or Christmas day: he shall forfeit for the first offence not exceeding 20 l, nor less than 10 l; for the second offence, not exceeding 30 l, nor less than 20 l; for the third and every other subsequent offence 50 l. To be levied and recovered as the like penalties for killing any hare in the night, or on a Sunday or Christmas day, as is above set forth.

At what time
hawking at th. m
shall be prohibited.

5. Every person whatsoever, who shall hawk at, destroy, or kill, any pheasant or partridge, with any kind of hawk, or dog, by colour of hawking, between the first of *July*, and the last of *August*, shall on conviction before two justices, by confession, or oath of two witnesses, in six months after the offence; be committed to gaol for one month, unless he pay upon conviction to the churchwardens or overseers for the use of the poor, 40 s for every such hawking at any pheasant or partridge, and 20 s for every such pheasant or partridge which he, hawk, or dog, shall take or kill. 7 *J. c.* 11 *s. 2.*

Within what
times taking
them in any kind
shall be prohibited.

6. Finally, by the 2 *G. 3. c.* 19. No person shall upon any pretence whatsoever, take, kill, carry, sell, buy, or have in his possession or use, any partridge between Feb. 12, and Sep. 1; or any pheasant between Feb. 1 and Oct. 1, yearly; on pain of forfeiting, on conviction by one witness, in any of the courts of record at W.

man

minster, 5l for every such fowl, with full costs. But this not to extend to any pheasant taken in the season allowed by this act, and kept in any mew or breeding place.

IV. Of pigeons.

1. A lord of a manor may build a dove-coat upon his own land, parcel of the manor; but a tenant of a manor cannot do it without the lord's licence. 3 *Salk.* 248. But any freeholder may build a dove-coat on his own ground. *Cro. El.* 548. *Cro. Ja.* 382. Who may erect a dove-coat.

2. And it hath been adjudged, that erecting of a dove-house is not a common nuisance, nor presentable in the court. *Cro. Jac.* 490, 1. Dove-coat not a nuisance.

3. By the 1 *J. c.* 27. s. 2. Every person who shall shoot at, kill, or destroy any house-dove or pigeon with any gun or bow; or shall take, kill, or destroy the same with setting dogs and nets, or with any manner of nets, snares, engines, or instruments whatsoever; shall, on conviction before two justices where the offence shall be committed or the offender apprehended, by confession, or oath of two witnesses, be committed to gaol three months, unless he pay to the churchwardens for the use of the poor of the parish where the offence was committed or the offender apprehended respectively, 20 s for every pigeon, or after one month after his commitment, become bound by recognizance with two sureties, before two justices, in 20 l apiece, not to offend again in like manner. The recognizance to be returned to the next sessions. Killing with dogs, nets, or engines.

And by the 2 *G.* 3. c. 29. If any person shall shoot at with an intent to kill or by any means kill or take, with a wilful intent to destroy any house-dove or pigeon, and shall be thereof convicted, by confession or oath of one witness, before one justice where the offence was committed or the party apprehended, he shall forfeit 20 s to the prosecutor; and if not forthwith paid, such justice may commit him to the gaol or house of correction, not exceeding 3 calendar months nor less than one, unless the forfeiture shall be sooner paid. But this not to extend to the owners of dove-coats, with regard to their own pigeons. And persons convicted on this act, shall not be convicted on any former act: and prosecutions on this act shall be commenced and carried on with effect within two months after the offence committed: and persons imprisoned for default of payment of the penalty, shall not be liable afterwards to pay such penalty.

Pigeons trespassing.

4. But if the pigeons come upon my land, and I kill them; the owner hath no remedy against me; tho' I may be liable to the statutes which make it penal to destroy them. *Cro. Jac.* 492.

Pigeons to go to the heir.

5. Doves in a dove-house, young and old, shall go to the heir, and not to the executor. *1 Inst.* 8.

V. Of wild ducks, wild geese, and other water fowl.

Shooting water fowl.

1. Every person who shall shoot at, kill, or destroy with any gun or bow, any mallard, duck, teal, or widgeon; and the same be proved by confession, or oath of two witnesses, before two justices;—shall be committed to gaol for three months, unless he pay to the churchwardens for the use of the poor, 20 s for each fowl, or after one month after commitment become bound by recognizance with two sureties, before two justices, in 20 l each, not to offend again in like manner: Which recognizance shall be returned to the next sessions. *1 J. c.* 27. *f.* 2.

Not to be taken in the moulting season.

2. No person, between the last day of *May*, and the last day of *August* yearly, shall take, or cause to be taken, any wild ducks, mallards, widgeons, teals, or wild geese, with nets or other engines; on pain of a year's imprisonment, and to forfeit for every fowl so taken 4 d, half to the king, and half to him that will sue by action of debt: Also the justices of the peace may enquire of, hear and determine the same, as in cases of trespass. *25 H.* 8. *c.* 11.

Nevertheless, any gentleman, or any other that may dispense 40 s a year of freehold, may hunt and take such wild fowl with their spaniels only, without using a net or other engine except the long bow. *id.*

But by a subsequent statute, if any person whatsoever (between *June* 1. and *Oct.* 1. yearly, *10 G.* 2. *c.* 32.) shall by hays, tunnels, or other nets, drive and take any wild duck, teal, widgeon, or any other water fowl, in any place of resort for wild fowl in the moulting season; and shall be convicted thereof before one justice by the oath of one witness; he shall for every such fowl forfeit 5 s, half to the informer, and half to the poor, by distress, rendering the overplus above the penalty and charges of distress; for want of distress, to be committed to the house of correction not exceeding one month, nor less than 14 days, to be whipt and kept to hard labour. And the nets to be seized and destroyed in the presence of the justice. *9 Ann.* *c.* 25. *f.* 4.

3. No person from *March 31*, to *June 30*, yearly, shall take or destroy the eggs of any mallard, teal, or other water fowl; on pain of a year's imprisonment, and of forfeiting for every egg one penny, half to the king, and half to him that will sue by action of debt; or, the justices of the peace may determine the same as in cases of trespass. 25 H. 8. c. 11. Destroying their eggs.

VI. Of heath fowl, grouse, and bustards.

1. Every person who shall shoot at, kill, or destroy, with any gun or bow, any grouse, heath-cock, or moor game; shall on conviction before two justices, by confession, or oath of two witnesses, be committed to gaol for three months, unless upon conviction he pay to the churchwardens for the use of the poor, 20s for each fowl, or, after one month after his commitment, become bound by recognizance with two sureties in 20l each, before two justices, not to offend again in like manner: the recognizance to be returned to the next sessions. 1 J. c. 27. s. 2. Shooting.

2. No person shall, upon any pretence whatsoever, wilfully take, kill, destroy, carry, sell, buy, or have in his possession or use, any heath fowl commonly called *Black game*, between Dec. 10, and Aug. 20; nor any grouse commonly called *Red game*, between Dec. 10, and Aug. 12; nor any *bustard*, between Mar. 1, and Sep. 1, in any year: on pain of forfeiting for the first offence any sum not exceeding 20l, nor less than 10l; and for the second and every subsequent offence, not exceeding 30l, nor less than 20l; half to the informer, and half to the poor. 13 G. 3. c. 55. s. 1, 2, 4.

Within what times only to be killed.

To be recovered in any of his majesty's courts of record at Westminster, on prosecution within 6 Kalendar months after the offence committed.—Or the same may be recovered before one justice, information on oath being made before him within three Kalendar months after the offence committed; which said justice may convict the offender by confession or oath of one witness: and on neglect or refusal to pay, shall levy the same by distress, together with all costs and charges attending the same. And such justice may order the offender to be detained in safe custody, until return may conveniently be had to the warrant of distress, unless the said offender shall give security, by recognizance or otherwise, to the satisfaction of such justice, for his appearance before him on

the day appointed for the return of the warrant of distress, such day not exceeding 5 days from the time of taking such security. And if no sufficient distress can be had, such justice shall commit the offender to the common gaol or house of correction, there to be kept to hard labour for any time not exceeding 6 nor less than 3 Kalendar months, unless the forfeiture, and all costs and charges attending the prosecution be sooner paid. *f. 3, 4, 9.*

And the conviction shall be drawn up in this or the like form: *Be it remembered, that on the — day of — in the year of our lord — A. B. having appeared before me — one of his majesty's justices of the peace for the county of — and due proof having been made upon oath by one or more credible witness or witnesses, or by confession of the party (as the case may be) is convicted of (specifying the offence, with the time and place where the same was committed, and also specifying, if known, that it is the first, second, or any subsequent offence against this act, as the case shall be). Given under my hand and seal the day and year aforesaid. Which conviction the justice shall cause to be written on parchment, and returned to the next sessions, there to be filed and kept amongst the records. And the clerk of the peace shall grant copies thereof, on payment of 1 s for each copy. f. 6, 7.*

And if any person shall think himself aggrieved, he may appeal to any general quarter sessions to be holden within 4 Kalendar months after the cause of complaint shall arise, giving 14 days notice in writing to the justice and to every other person against whom complaint shall be made; and in 4 days after such notice, entering into recognizance before a justice with one sufficient surety, conditioned to try the appeal at, and abide the order of, and pay such costs as shall be awarded by the justices at such sessions. And the justice, having received notice of appeal, shall return all proceedings had before him, touching the matter of the said appeal, to the justices at such sessions. And the said justices, upon proof of the notice given, and of the entering into such recognizance, shall determine the appeal in a summary way, and award costs to either party. And none of the proceedings shall be quashed for want of form, nor removed by certiorari or other process into any of the courts at Westminster. *f. 10.*

Killing in the
night, or on a
Sunday or
Christmas day.

3. By the 9 *An. c. 25.* If any person whatsoever shall take or kill any moor, heath-game, or grouse, in the night time; he shall, on conviction before one justice, on
the

the oath of one witness, forfeit 5*l*, half to the informer, and half to the poor, by distress; for want of distress, to be sent to the house of correction for three months for the first offence, and for every other offence four months.

And by the 13 G. 3. c. 80. If any person shall knowingly and wilfully kill, take, or destroy, or use any gun, dog, snare, net, or other engine, with intent to kill, take, or destroy, any moor game or heath game, in the night, viz. between the hours of 7 at night and 6 in the morning from the 12th day of October to the 12th day of February, and between the hours of 9 at night and 4 in the morning from the 12th day of February to the 12th day of October; or, in the day time, on a Sunday or Christmas day: he shall forfeit for the first offence not exceeding 20*l* nor less than 10*l*, for the second offence not exceeding 30*l* nor less than 20*l*, for the third and every other subsequent offence 50*l*. To be levied and recovered as the like penalties for killing any hare in the night, or on a Sunday or Christmas day, as is above set forth.

4. For the better preserving the red and black game of *Burning ling*, grouse commonly called heath-cocks, or heath-polts, no person whatsoever on any mountains, hills, heaths, moors, forests, chafes, or other wastes, shall presume to burn between Feb. 2, and June 24, any grig, ling, heath, furze, gorse, or fern; on pain of being committed to the house of correction, for any time not exceeding one month, nor less than ten days, there to be whipt and kept to hard labour. 4 & 5 W. c. 23. s. 11.

As here is no method of conviction directed for this offence, the justices of the peace seem to have no cognizance thereof; but the trial and conviction must be at the assizes, or in the courts at *Westminster*.

In the 5 An. c. 14. there are particular directions concerning the burning of ling, heath, or brakes in *Sherwood* forest, and other places in *Nottinghamshire*, which not being of general concern are here omitted.

VII. Of herons.

1. Every person who shall shoot at, kill or destroy, *Shooting herons*, any heron, with gun or bow, shall on conviction before two justices, by confession, or oath of two witnesses, be committed to gaol for three months, unless on conviction he pay to the churchwardens for the use of the poor, 20*s* for each heron, or after one month from his commitment, become

become bound by recognizance with two sureties in 20^s each, before two justices, not to offend again in like manner: The recognizance to be returned to the next sessions. 1 *J. c. 27. s. 2.*

None shall take
but by hawking.

2. No person, without his own ground, shall flea, take, or cause to be taken, by mean of craft or engine, any herons, unless it be with hawking, or with long bows; on pain of 6s 8d, to him who shall sue by action of debt; or the sessions may call before them persons suspected, and examine them; and if found in default, may commit them till they have found surety for payment of the forfeiture to the king; and the justices shall have the tenth part of the forfeiture for their labour. 19 *H. 7. c. 11.*

Young herons.

3. And no person, without his own ground, shall take any young herons out of the nest; on pain of 10s in like manner, for every young heron. 19 *H. 7. c. 11.*

Eggs.

4. And if any person from *March 31*, to *June 30*, shall take or destroy the eggs of any heron; he shall be imprisoned for a year, and forfeit for every egg 8d, half to the king, and half to him that will sue by action of debt, or before the justices of the peace. 25 *H. 8. c. 11.*

VIII. Of other fowl.

In general; No manner of person, from the last day of *March* to the last day of *June* yearly, shall by day or night, take, or destroy any eggs of any kind of wild fowl, from or in any nest or place, where they shall chance to be laid by any kind of the same wild fowl; on pain of imprisonment for a year, and to forfeit for every egg of a bustard 20d, of a bittour or shovelfard 8d, and of other wild fowl (except crows, ravens, boscards, and other fowl not used to be eaten) 1d; half to the king, and half to him that will sue by action of debt: Also the justices of the peace may determine the same, as in cases of trespass. 25 *H. 8. c. 11. **

VII. Laws

* With regard to fowl not used to be eaten, together with certain other noxious animals, there were provisions made by an ancient statute, viz. 8 *Ed. c. 15.* intitled, *An Act for the preservation of graine*, which it were to be wished might be revived, with a proper consideration of the difference of the value of money betwixt that time and the present; by which it was required, that

VII. Laws for preserving the game of fish in particular.

There are some acts relating to this subject, of which, being of less general concern, it is thought sufficient to insert only the titles; *viz.*

(1) An act for the preservation of fishing in the river of *Severn*. 30 C. 2. c. 9.

(2) An act for the increase and better preservation of salmon and other fish, in the rivers within the counties of *Southampton* and *Wilts*. 4 An. c. 21. In which some alterations are made by the 1 G. 2. c. 18.

(3) An act for the better preservation and improvement of the fishery within the river of *Thames*, and for regulating and governing the company of fishermen of the said river. 9 An. c. 26.

that the churchwardens should levy by an assessment, and pay, for the heads of every three old crows, choughes, or rookes, 1 d; of sixe young crows, choughes, or rookes, 1 d; and for every sixe egges of any of them, 1 d; for every twelve stares heads, 1 d; for every heade of merten hawks, furesekytte, moldkytte, busarde, schagge, carmeraunt, or ryngtayle, 2 d; and for two egges of them 1 d; for every iron or ospray's heade, 4 d; for the heade of every wood wall, pye, jay, raven, kyte, or king's fisher, 1 d; bulsfynce, or other bird that devour-eth the blowth of fruit, 1 d; for the heade of every foxe or gray, 12 d; and for the heade of every fytchewe, polcate, wesel, flote, fayre, bade, or wylde cat, 1 d; for the heads of every otter or hedgehogge, 2 d; for the heads of three rattes or twelve mise, 1 d; for the heade of every want or moldwarpe, 1 halfpenny.

And by another ancient statate 24 H. 8. c. 10. Every township was required to keep a crow net, to destroy crows, rooks, and choughs.

There is some shadow of these regulations still remaining in some parishes, where they give a reward for destroying several of the abovesaid noxious fowl and vermin. These statutes were suffered to expire, probably because in a short time there would be no need of their continuance; but it might be convenient nevertheless, to revive the like provisions from time to time; and, amongst the rest of the ravenous tribe, to set a price now at length upon the head of that distinguished fowl, for the sake of which most of the ancient laws concerning the winged game were enacted, and which it was felony to destroy. But now the current hath received a contrary direction; and the hawk himself destroys more game, than gunpowder and hailshot which have usurped his empire.

(4) An

(4) An act for the more effectual preservation and improvement of the spawn and fry of fish in the river of *Thames*, and waters of *Medway*; and for the better regulating the fishery thereof. 30 G. 2. c. 21.

What follows seems best reducible under these heads:

I. The penalty of fishing in ponds and other private fisheries.

II. Rules about the size, and preserving the breed of fish.

III. Rules concerning fishing in or near the sea.

IV. Importing fish.

I. The penalty of fishing in ponds and other private fisheries.

Who may erect
a fish pond.

1. Any man may erect a fish pond without licence, because it is a matter of profit, and for the increase of victuals. 2 *Inst.* 199.

Three years imprisonment and
fine.

2. If any trespassers in ponds be thereof attainted at the suit of the party, great and large amends shall be awarded according to the trespass; and they shall have three years imprisonment, and after shall make fine at the king's pleasure (if they have whereof) and then shall find good surety that after they shall not commit the like trespass: And if they have not whereof to make fine, after three years imprisonment, they shall find like surety; and if they cannot find like surety they shall abjure the realm. And if none sue within the year and day, the king shall have the suit. 3 *Ed. 1. c. 20.*

Note; Those are trespassers in ponds, who endeavour to take fish therein. 2 *Inst.* 200.

Three months
imprisonment
and treble damages.

3. If any person shall unlawfully break, cut, or destroy any head or dam of a fish pond, or shall wrongfully fish therein, with intent to take or kill fish; he shall on conviction at the suit of the king, or of the party, at the assizes or sessions, be imprisoned three months, and pay treble damages; and after the three months expired shall find sureties for his good abearing for seven years, or remain in prison till he doth. 5 *El. c. 21. f. 2, 6.*

Treble damages
and 10 s to the
poor.

4. Whereas divers idle, disorderly, and mean persons do betake themselves to the stealing, taking, and killing of fish

fish, out of ponds, pools, motes, stews, and other several waters and rivers, to the great damage of the owners thereof; it is enacted, that if any person shall use any net, angle, hair, noose, troll, or spear; or shall lay any wears, pots, fish hooks, or other engines; or shall take any fish by any means or device whatsoever, or be aiding thereunto, in any river, stew, pond, mote, or other water, *without the consent of the lord or owner of the water*; and be thereof convicted by confession, or oath of one witness, before one justice, in one month after the offence; every such offender in stealing, taking or killing fish, shall for every such offence give to the party injured such recompence and in such time as the justice shall appoint, not exceeding treble damages; and moreover shall pay down to the overseers for the use of the poor, such sum, not exceeding 10 s., as the justice shall think meet: In default of payment, to be levied by distress; for want of distress, to be committed to the house of correction not exceeding one month, unless he enter into bond with one surety to the party injured, not exceeding 10 l., never to offend in like manner. 22 & 23 C. 2. c. 25. s. 7.

And the justice may take, cut, and destroy all such angles, spears, hairs, nooses, trolls, wears, pots, fish hooks, nets or other engines, wherewith such offender shall be apprehended. s. 8.

Persons aggrieved may appeal to the next sessions, whose determination shall be final, if no title to any land, royalty, or fishery be therein concerned. s. 9.

M. 32 G. 2. K. and Mallinsm. A conviction for *taking and killing fish*, not setting forth (amongst other particulars) that the defendant had not the licence or *consent of the owner*, was adjudged to be bad. For, by the court; The offence provided for against the act is *stealing fish*, taking it without the consent of the owner. The jurisdiction given to the justice is over every such offender in stealing, taking, and killing. But the man here is not convicted of any offence; for he is not charged with stealing; nor even with taking and killing the fish of another person, or in another person's pond. It may be his own pond, and his own fish, for any thing that is stated to the contrary. And the conviction was quashed. *Burrow, Mansfield. 679.*

5. Whereas divers idle, disorderly, and mean persons, ^{Engines to be seized,} have and keep nets, angles, leaps, piches and other engines for the taking and killing of fish out of the ponds, waters, rivers, and other fisheries, to the damage of the owners

owners thereof, therefore no person hereafter shall have or keep any net, angle, leap, piche, or other engine for the taking of fish, other than the makers and sellers thereof, and other than the owner and occupier of a river or fishery; and except fishermen and their apprentices lawfully authorized in navigable rivers. And the owner or occupier of the river or fishery, and every other person by him appointed, may seize, detain, and keep to his own use, every net, angle, leap, piche, and other engine, which he shall find used or laid, or in the possession of any person fishing in any river or fishery, without the consent of the owner or occupier thereof. And also any person, authorized by a justice's warrant, may in the day time search the houses, outhouses, and other places of any person hereby prohibited to have or keep the same, who shall be suspected to have or keep in his custody or possession any net, angle, leap, piche, or other engine aforesaid, and seize and keep the same to his own use, or cut or destroy the same, as things by this act prohibited to be kept by persons of their degree. 4 & 5 W. c. 23. s. 5, 6.

Transportation,
or pecuniary for-
feiture.

6. If any person shall enter into any park or paddock fenced in, and inclosed, or into any garden, orchard, or yard, adjoining or belonging to any dwelling house, in or through which park or paddock, garden, orchard, or yard, any river or stream of water shall run or be, or wherein shall be any river, stream, pond, pool, moat, stew, or other water, and by any ways, means, or device whatsoever, shall steal, take, kill, or destroy, any fish bred, kept, or preserved therein, without the consent of the owner thereof; or shall be aiding or assisting therein; or shall receive or buy any such fish, knowing the same to be so stolen or taken as aforesaid; and shall be convicted thereof at the assizes, within six calendar months after the offence committed; he shall be transported for seven years. And any offender, surrendering himself to a justice, or being apprehended or in custody for such offence or on any other account, who shall make confession thereof, and a true discovery on oath of his accomplice or accomplices, so as such accomplice may be apprehended, and shall on trial give evidence so as to convict such accomplice, shall be discharged of the offence so by him confessed. 5 G. 3. c. 14. s. 1, 2.

And if any person shall take, kill, or destroy, or attempt to take, kill, or destroy, any fish in any river or stream, pond, pool, or other water (not being in any park

mark or paddock, or in any garden, orchard, or yard, adjoining or belonging to any dwelling house, but in any other inclosed ground being private property); he shall, on conviction before one justice, on the oath of one witness, forfeit 5 l. to the owner or owners of the fishery of such river or stream of water, or of such pond, pool, meadow, or other water: And such justice, on complaint upon oath, may issue his warrant to bring the person complained of before him; and if he shall be convicted before such justice, or any other justice of the county or place, he shall immediately after conviction pay the said penalty of 5 l. to such justice, for the use of such person as the same is hereby appointed to be paid unto; and in default thereof, shall be committed by such justice to the house of correction for any time not exceeding six months, unless the forfeiture shall be sooner paid: Or such owner of the fishery may bring an action for the penalty (within six calendar months after the offence) in any of the courts of record at Westminster. *s. 3, 4.*

Provided, that nothing in this act shall extend to subject any persons to the penalties thereof, who shall fish, take, or kill, and carry away, any fish in any river or stream of water, pond, pool, or other water, wherein such person shall have a just right or claim to take, kill, or carry away such fish. *s. 5.*

[There seem to be some difficulties upon the face of this act; but the general purport thereof seemeth to be, for the protection of *private fisheries*, and not as intending to prohibit persons otherwise qualified, from taking any fish at all in any place whatsoever, unless such person hath an exclusive grant from the crown of a fishery within certain bounds.

As to the *transportation* clause; the prosecution must be at the assizes within *six calendar months* after the offence committed. It would have answered the purpose more effectually, if the prosecution had been directed to be at the *next* assizes; for the assizes are not held precisely at six months distance, so that an offender in the intermediate space may escape: and in some counties the assizes are held but once a year.

But the greatest difficulty is upon the other clause, concerning the killing of fish, not in any paddock, garden, orchard, or the like, but within any other inclosed ground being private property. By this it seemeth generally to be understood, that no person (not having a private fishery may kill fish, except in a river running thro' or

by a common. But the application of the penalty seemeth to restrain the generality of the clause to private fisheries only. For the penalty is given to the owner of the fishery. A lord of a manor, as such, doth not seem to have an exclusive right to all the fish within his manor, any more than to any other game. These animals, being *feræ naturæ*, are originally the king's; and are granted by him, with the advice and assent of the lords spiritual and temporal and commons in parliament assembled, to persons qualified by estate or degree, as the acts of parliament for that purpose set forth. In such case, no lord of a manor or other hath an exclusive privilege; but if another person comes upon his ground, who hath no right upon such ground, but hath a right by qualification to kill game, such person is liable to an action, not for killing game, but only for the trespass. But a man by grant, or by prescription (as it seemeth, which is evidence of a grant), may claim to have an exclusive fishery within certain limits; and this statute seemeth intended to protect such fishery. And the proviso or exception seemeth to be inserted on the behoof of persons qualified; for it could not be supposed that the act intended to prohibit the owners themselves of fisheries from the taking of fish within their own liberties. But as there is a variety of opinions upon the afore said clause, an explanation thereof might be of use.]

Felony, without
benefit of clergy.

7. By the Black act before mentioned, if any person being armed and disguised, shall unlawfully steal or take away any fish out of any river or pond; or (whether armed and disguised or not) shall unlawfully and maliciously break down the head or mound of any fish pond, whereby the fish shall be lost or destroyed, or shall rescue any person in custody for such offence, or procure any other to join with him therein; he shall be guilty of felony without benefit of clergy.

II. Rules concerning the assize, and preserving the breed of fish.

Salmon.

1. If any person shall lay or draw any net, engine, or other device, or cause any thing to be done in the *Severn, Dee, Wye, Teame, Were, Tees, Ribble, Mersey, Dun, Ayr, Ouzes, Swaile, Calder, Wharf, Ewre, Darwent, or Trent*, whereby the spawn or fry of salmon, or any kepper or shedder salmon, or any salmon not 18 inches from the

eye to the extent of the middle of the tail, shall be taken and killed; or shall set any bank, dam, hedge, flank, or net cross the same, whereby the salmon may be taken, or hindered from passing up to spawn; or shall between July 31, and Nov. 12, (except in the Ribble, where they may be taken between Jan. 1, and Sep. 15,) take any salmon of any kind in any of the said rivers; or shall, after Nov. 12 yearly, fish there for salmon with any net less than $2\frac{1}{2}$ inches in the mesh; he shall, on conviction, in one month, before one justice, on view, confession, or oath of one witness, forfeit 5 l. and the fish, nets, and engines; half the said sum to the informer, and half to the poor, by distress; for want of distress, to be committed to the house of correction or gaol, not more than three months, nor less than one, to be kept to hard labour, and suffer such other corporal punishment as the justice shall think fit: The nets and engines to be cut or destroyed, in presence of the justice: The banks, dams, hedges, and flanks, to be demolished at the charge of the offender, to be levied in like manner. 1 G. 2. c. 18. f. 14.

Note; It is not said who shall have the fish; so that it seemeth that they are forfeited to the king.

And no salmon out of the said rivers shall be sent to London, under six pounds weight; on pain that the sender, buyer, or seller, on the like conviction, shall forfeit 5 l. and the fish; half to the informer, and half to the poor, by distress; for want of sufficient distress, to be committed to the house of correction or gaol, to be kept to hard labour for three months, if not paid in the mean time. *id.* f. 15.

And persons aggrieved may appeal to the next sessions. *id.* f. 17.

2. No salmon shall be taken in the *Humber, Ouse, Trent, Don, Aire, Darwent, Wharfe, Nidd, Tyne, Swale, Tese, Tyne, Eden*, or any other water wherein salmon are taken, between Sep. 8, and Nov. 11. Nor shall any young salmon be taken at mill-pools (nor in other places, 13 R. 2. f. 1. c. 19.) from *Midapril* to *Midsummer*; on pain of having the nets and engines burnt for the first offence, for the second, imprisonment for a quarter of a year; for the third, a whole year; and as the trespass increaseth, so shall the punishment. And overseers shall be assigned to inquire hereof. 13 Ed. 1. f. 1. c. 47. That is, under

Salmon spawn
and smelts.

the great seal, and by authority of parliament. 2 *Hy* 477.

And no person shall put in the waters of *Thames*, *Humber*, *Ouze*, *Trent*, nor any other waters, in any time of the year, any nets called stalkers, nor other nets or engines whatsoever, by which the fry or breed of *Salmons*, *lampreys*, or any other fish may in any wise be taken or destroyed; on the like pain. 13 *R.* 2. *fl.* 1. c. 19.

And the waters of *Lon*, *Wyre*, *Mersee*, *Rybbyl*, and all other waters in *Lancashire*, shall be put in defence as to taking of salmon, from *Michaelmas* to *Candlemas*, and in no other time of the year. And conservators shall be appointed in like manner. 13 *R.* 2. *fl.* 1. c. 19.

And the justices of the peace (and the mayor of *London* on the *Thames* and *Medway*) shall survey the offences in both the acts abovementioned; and shall survey and search all the weirs in such rivers, that they shall not be very strait for the destruction of such fry and brood, but of reasonable wideness after the old assize used or accustomed; and they shall appoint under-conservators, who shall be sworn to make like survey, search and punishment. And they shall inquire in sessions, as well by their officers as at the information of the under-conservators, of all defaults aforesaid, and shall cause them which shall be thereof indicted, to come before them; and if they be thereof convicted, they shall have imprisonment, and make fine at the discretion of the justices: and if the same be at the information of an under-conservator, he shall have half the fine. 17 *R.* 2. c. 9.

Spawn in general
and fish under
size and out of
season.

3. By the 1 *El.* c. 17. No person, of what estate, degree, and condition soever he be, shall take and kill any young brood, spawn, or fry of fish; nor shall take and kill any salmon or trouts, not being in season, being keeper or shedder; nor any pike or pikerel not being in length 10 inches fish or more; nor any salmon not being in length 16 inches fish; nor any trout not being in length eight inches fish; nor any barbel not being in length 12 inches: and no person shall fish or take fish by any device, but only with net or trammel, whereof the mesh shall be two inches and a half broad (angling excepted, and except finelts, loches, minnies, bulheads, gudgeons, and eels); on pain of forfeiting 20 s for every offence, and also the fish, nets, and engines.

(Note, in some editions of the statutes it is 20 l, in others 20 s; in the record it is not distinguishable whether

is pounds or shillings. The latter seems more adequate to the offence.)

And the conservators of rivers may inquire hereof by a jury; and in such case they shall have the fines.

The leet also may inquire hereof; and then the forfeiture shall go to the lord of the leet. And if the steward do not charge the jury therewith, he shall forfeit 40 s; half to the king, and half to him that shall sue. And if the jury conceal the offence, he may impanel another jury to inquire of such concealment; and if it is found, the former jury shall forfeit every one 20 s, to the lord of the leet.

And if the offence is not presented in the leet within a year, then it may be heard and determined at the sessions or assizes. (Saving the right of the conservators.)

And by the 33 G. 2. c. 27. No person shall take, or knowingly have in his possession either in the water or on shore, or sell or expose to sale, any spawn, fry, or brood of fish, or any unsizeable fish, or fish out of season, or any smelt not five inches long: and any person may seize the same together with the baskets and package, and charge a constable or other peace officer with the offender and with the goods, who shall carry them before a justice; and on conviction before such justice, the same shall be forfeited and delivered to the prosecutor; and the offender shall besides forfeit 20 s, to be levied by distress by warrant of such justice, and distributed half to the prosecutor and half to the poor of the parish where the offence was committed (and any inhabitant of such parish, nevertheless, may be a witness); for want of sufficient distress, to be committed to the house of correction to be kept to hard labour for any time not exceeding three months, unless the forfeiture be sooner paid.—Provided, that the justice may mitigate the said penalty, so as not to remit above one half. Persons aggrieved may appeal to the next sessions.—And the form of the conviction may be this:

Be it remembred, that on this ——— day of ——— in the ——— year of the reign of ——— A. O. is convicted before me ——— one of his majesty's justices of the peace for the ——— of ——— for ——— and I do adjudge him to pay and forfeit the sum of ——. Given under my hand and seal the day and year abovesaid. s. 13, 15, 16, 17, 18, 19.

Nets standing
day and night.

4. No person shall fasten any nets over rivers, to stand continually day and night; on pain of an hundred shillings to the king. 2 H. 6. c. 15.

III. Rules concerning fishing in or near the sea.

Lobsters.

1. No person shall take, kill, or destroy any lobsters on the coast of Scotland, from June 1, to Sep. 1, on pain of 5 l; to be recovered by any person who shall inform and sue for the same, on a summary complaint before two justices of the shire on the coast where the offence shall be committed. 9 G. 2. c. 33. s. 4.

Erecting a new
wear.

2. Every person who shall set up any new wear along the sea shore, or in any haven, harbour, or creek, or within five miles of the mouth of any haven or creek, shall, on conviction before one justice, or mayor, forfeit for every offence 10 l, half to the king, and half to him that shall sue; to be levied by the constables or churchwardens by distress. 3 J. c. 12. s. 2.

Spawn of sea
fish.

3. Every person who shall willingly take, destroy, or spoil any spawn, fry, or brood of any sea fish, in any wear or other engine or device whatsoever; shall forfeit for every offence 10 l, in like manner. 3 J. c. 12. s. 2.

Size of nets at
sea.

4. And every person who shall fish in any haven, harbour, or creek, or within five miles of the mouth of any haven, harbour, or creek of the sea, with any draw-net, or drag-net under three inches mesh, viz. 1½ inch from knot to knot (except for the taking of smoulds in Norfolk only), or with any nets with canvas, or other engine or device, whereby the spawn, fry, or brood of sea fish may be destroyed; shall in like manner forfeit such net, and also 10 s, for every offence, half to the poor, and half to him that shall sue. 3 J. c. 12. s. 2.

But this act shall not extend to any net of lesser mesh, only for taking of herrings, pilchards, sprats, or lavidnian. *id.* s. 3.

And by a subsequent statute, if any person shall use at sea, on the *English* coast, any trawl-net, drag-net, or set-net, for catching of any fish (except herrings, pilchards, sprats or lavidnian) which hath the mesh less than 3 inches from knot to knot; or which hath a false or double bottom; or shall put one net behind another; he shall, on conviction (after summons) before one justice where the offender resides or shall be found, on oath of two witnesses, in one month after the offence, forfeit the

same, and also 20 l, half to the informer, and half to the poor, by distress; for want of sufficient distress, to be committed to gaol for twelve months; and the nets to be burnt. 1 G. 2. c. 18. Persons aggrieved may appeal to the next sessions. *id.*

5. By the same act of 1 G. 2. if any person shall bring to shore, or expose to sale any fish less than the following sizes from the eyes to the extent of the tail, *viz.* bret or turbot 16 inches, brill or pearl 14, codlin 12, whiting 6, bass and mullet 12, sole 8, plaice or dab 8, flounder 7; he shall forfeit the fish to the poor; and also 20 s, half to the informer, and half to the poor; to be levied in the like manner: for default of payment, or of sufficient distress, to be sent to the next house of correction, or other common gaol of the county, to be severely whipt and kept to hard labour six days, and not longer than 14. Persons aggrieved may appeal to the next sessions.

But by the 33 G. 2. c. 27. Bret or turbot, brill or pearl, altho' under the said dimensions, may be exposed to sale, so as the same be not sold by retail for above 6 d a pound. And if any greater price shall be demanded or taken, or such fish shall not be weighed and measured if required; the same shall be forfeited, and the offender shall also forfeit 20 s, to be recovered, mitigated, and applied, as the penalties in the said act mentioned under the last head, relating to the spawn of fish, and fish under size, and out of season: and the money paid shall be returned to the party who paid the same. *f.* 11.

IV. Importing fish.

1. If any ling, herring, cod, or pilchard, salmon, eels, or congers, taken by foreigners, shall be imported or exposed to sale; any person may seize the same, half for himself, and half for the poor. 18 C. 2. c. 2.

2. And by the 1 G. 2. c. 18. and 9 G. 2. c. 33. No fish taken by, or received of any foreigner, except protestants inhabiting in England, shall be imported (except eels, stock fish, anchovies, sturgeon, botarge, or cavear, lobster, and turbot); on pain of 100 l, and the master of the vessel 50 l, half to the poor and half to the informer who shall sue in 12 months in any of the courts at *Westminster*. Penalty 100 l.

For fishing, so far as the salt duties are concerned therein, may be consulted that part of the title *Critica*, which treateth of the duties upon salt,

The fish markets in *London* and *Westminster* are regulated by the statutes of 22 G. 2. c. 49. 29 G. 2. c. 39. 33 G. 2. c. 27. and 2 G. 3. c. 15. which are too large and not general enough to be here inserted.

A. Appointment of a gamekeeper; on the 22^d 23 C. 2. c. 25. s. 2. 5 An. c. 14. s. 4. and 3 G. c. 11. s. 1.

I A. L. esquire, lord of the manor of——do hereby nominate, authorise, and appoint A. G. of P. in the county of——yeoman, to be my gamekeeper of and within my said manor of——in the county aforesaid, with full power, licence, and authority to kill any hare, pheasant, partridge, or any other game whatsoever, in and upon my said manor of——for my sole use, and immediate benefit; and also to take and seize all such guns, bows, greyhounds, setting dogs, lurchers, or other dogs to kill hares or conies, ferrets, trawls, lowbels, hays, or other nets, harepipes, snares, or other engines for the taking and killing of conies, hares, pheasants, partridges, or other game, as within the precincts of my said manor of——shall be used by any person or persons who by law are prohibited to keep or use the same. Given under my hand and seal, this——day of——in the——year, &c.

B. Warrant to search for dogs and engines; on the 22^d 23 C. 2. c. 25. s. 2.

Westmorland. } To ——

WHEREAS complaint hath been made unto me J. P. esquire, one of his majesty's justices of the peace in and for the said county, upon the oath of A. I. of——in the said county, yeoman, that he the said A. I. hath good ground to suspect and doth suspect that A. O. of——aforesaid in the county aforesaid, yeoman, being a person in no respect qualified by the laws of this realm so to do, hath and keepeth in his custody a greyhound [gun, net, &c.] to kill and destroy the game: These are therefore to command you in his majesty's name to enter into, and search in the day time, the houses, out-houses,

outhouses, and other places of him the said A. O. at ———
aforesaid, and if you there find any greyhound, &c. that you
seize and keep the same for the use of A. L. esquire, lord of the
manor of ——— in which manor the said houses, outhouses, and
other places, are situate and do lie, or otherwise that you cut in
pieces or destroy the same. Given under my hand and seal the
—— day of ——— in the —— year, &c.

C. Information against a person for keeping dogs
or engines; on the 5 *An. c. 14. s. 4.*

Westmorland. **T**HE information and complaint of A. I.
of ——— in the county of ——— yeoman,
made before me J. P. esquire, one of his majesty's justices of
the peace for the said county, the —— day of —— in the
year —— Who saith, That on the —— day of —— in
the year —— at the parish of —— in the county aforesaid,
one A. O. of —— in the county aforesaid, shoemaker, did
keep and use a certain dog called a greyhound [or as the case is]
to kill and destroy the game, he the said A. O. not being qua-
lified by the laws of this realm so to do; whereby he the said
A. O. hath forfeited the sum of five pounds. And thereupon
he the said A. I. prayeth the judgment of me the justice aforesaid
in the premisses, and that he may have one moiety of the said
forfeiture, according to the form of the statute in that case made,
and that the said A. O. may be summoned to answer the pre-
misses before me the justice aforesaid.

A. I.

Before me

J. P.

D. Summons thereupon.

Westmorland. { To the constable of —— in the said
county.

WHEREAS information and complaint hath been made
before me J. P. esquire, one of his majesty's justices
of the peace for the said county, that A. O. of —— in the
county aforesaid, shoemaker, on the —— day of —— in the
year —— at the parish of —— in the county aforesaid,
did keep and use a certain dog called a greyhound [or as the
case is] to kill and destroy the game, he the said A. O. not
being qualified by the laws of this realm so to do: These are
therefore to require you forthwith to summon the said A. O. to
appear before me at —— in the said county, the —— day of
—— at the hour of —— to answer to the said information
and

and complaint, and to be further dealt with according to law. And be you then there, to certify what you shall have done in the execution hereof. Herein fail you not. Given under my hand and seal the ——— day of ——— in the year ———.

E. Conviction of keeping dogs or engines ; on the
5 An. c. 14. s. 4.

Westmorland. **B**E it remembred, that on the ——— day of ——— in the ——— year of the reign of ——— of Great Britain, France, and Ireland king, defender of the faith, and so forth, at ——— in the county aforesaid, A. I. of ——— cometh before me J. P. esquire, one of the justices of our said lord the king, assigned to keep the peace of our said lord the king in the said county, and also to bear and determine divers felonies, trespasses and other misdemeanors in the said county committed, and giveth me the said justice to understand and be informed, that on the ——— day of ——— in the year aforesaid, at the parish of ——— in the county aforesaid, one A. O. of the parish aforesaid in the county aforesaid, shoemaker, not then having lands and tenements, nor any other estate of inheritance, in his own or his wife's right, of the clear yearly value of 100 l per annum, nor for term of life, nor any lease nor leases of 99 years, nor for any longer term, of the clear yearly value of 150 l, nor then being son and heir apparent of an esquire, nor of any other person of higher degree, nor the owner nor keeper of any forest, park, chase, or warren, nor gamekeeper to any lord or lady of a manor, did keep and use a certain dog, called a greyhound, to kill and destroy the game, against the form of the statute in that case made and provided : And afterwards upon the aforesaid day and in the year first abovementioned, he the said A. O. after having been duly summoned in this behalf before me the justice aforesaid, appeareth and is present, in order to make his defence against the said charge, and having heard the same, he the said A. O. is asked by me the said justice, if he can say any thing for himself, why he the said A. O. should not be convicted of the premisses above charged upon him in form aforesaid ; who pleadeth that he is not guilty of the said offence : Nevertheless on the ——— day of ——— aforesaid in the year aforesaid, at ——— aforesaid, in the county aforesaid, one credible witness, to wit, A. W. of ——— yeoman, cometh before me the aforesaid justice, and before me the same justice upon his oath on the holy gospel to him then and there by me the aforesaid justice administered, deposeth, sweareth, and upon his oath aforesaid affirmeth,
and

and saith, that the aforesaid A. O. on the — day of — aforesaid, in the year aforesaid at the parish of — aforesaid, in the county aforesaid, not then having lands and tenements, nor any other estate of inheritance, in his own or his wife's right, of the clear yearly value of 100l per annum, nor for term of life, nor any lease nor leases of 99 years, nor for any longer term, of the clear yearly value of 150l, nor then being son and heir apparent of an esquire, nor of any other person of higher degree, nor the owner nor keeper of any forest, park, chase, or warren, nor gamekeeper to any lord or lady of a manor, did keep and use a certain dog called a greyhound, to kill and destroy the game : And thereupon the aforesaid A. O. the — day of — in the year aforesaid, at — aforesaid, in the county aforesaid, before me the same justice, by the oath of one credible witness aforesaid, according to the form of the statute aforesaid, is convicted : And for his offence aforesaid hath forfeited the sum of five pounds, to be distributed as the statute aforesaid doth direct. In witness whereof, I the said justice to this present record of the conviction aforesaid, have set my hand and seal at — aforesaid, in the county aforesaid, the — day of — aforesaid in the year aforesaid.

If he doth not appear upon the summons, the form may be varied accordingly ; as is set forth specially under the title **Conviction**.

F. Warrant to distrain 5l for keeping dogs or engines ; on the 5 *An. c. 14. s. 4.*

Westmorland. { To —

WHEREAS A. O. of — in the said county, shoemaker, is this day convicted before me J. P. esquire, one of his majesty's justices of the peace in and for the said county, upon the oath of A. W. a credible witness, for that he the said A. O. being a person not qualified by the laws of this realm so to do, on the — day of — in the — year of the reign of — did keep and use in the parish of — aforesaid, in the county aforesaid, a certain dog called a greyhound, to kill and destroy the game, by virtue whereof he the said A. O. hath forfeited the sum of 5l, to be distributed as herein after is mentioned : These are therefore in his said majesty's name, to command you to levy the said sum by distress of the goods of him the said A. O. and if within the space of
[four]

[four] days next after such distress by you taken, the said sum, together with reasonable charges of taking and keeping the said distress, shall not be paid, that then you do sell the said goods so by you distrained, and out of the money arising by such sale that you do pay one half of the said sum of 5 l to A. O. of—— in the said county, yeoman, who informed me of the said offence, and the other half of the said sum of 5 l to the overseers of the poor of the parish of——aforesaid, where the said offence was committed, for the use of the poor of the said parish; returning the overplus on demand unto him the said A. O. the reasonable charges of taking, keeping, and selling the said distress, being first deducted. And if sufficient distress cannot be found of the goods of the said A. O. whereon to levy the said sum of 5 l, that then you certify the same to me, together with the return of this precept. Given under my hand and seal the—— day of—— in the—— year of——.

G. Commitment for want of distress, for keeping dogs and engines; on the 5 An. c. 14. s. 4.

Westmorland. { To the constable of—— in the said county, and to the keeper of the house of correction at—— in the said county.

WHEREAS A. O. of—— in the said county, shoemaker, was on the—— day of—— in the—— year of—— convicted before me J. P. Esquire, one of his majesty's justices of the peace in and for the said county, upon the oath of A. W. a credible witness, for that he the said A. O. not being a person by the laws of this realm qualified so to do, on the—— day of—— in the year aforesaid, did keep and use in the parish of—— aforesaid, in the county aforesaid, a certain dog called a greyhound, to kill and destroy the game, by virtue whereof he the said A. O. hath forfeited the sum of 5 l; And whereas on the said—— day of—— in the year aforesaid, I did issue my warrant to the constable of—— to levy the said sum of 5 l, by distress and sale of the goods of him the said A. O. and to distribute the same according as is directed by the statute in that behalf made; and whereas it duly appears to me, as well on the oath of the said constable, as otherwise, that he the said constable hath used his best endeavours to levy the said sum on the goods of the said A. O. as aforesaid, but that no sufficient distress can be had whereon to levy the same: These are therefore

therefore to command you the said constable of ———— afore-
said, to apprehend the body of the said A. O. and him safely
to convey to the house of correction at ———— in the said
county, and there deliver him to the said keeper thereof, to-
gether with this precept. And I do hereby command you, the
said keeper of the said house of correction, to receive into
your custody in the said house of correction the said A. O.
and him there safely to keep for the space of three months :
and for so doing this shall be your sufficient warrant. Given
under my hand and seal the ———— day of ———— in the ————
year, &c.

H. Certiorari bond, on a conviction for keeping
dogs or engines ; on the 5 *An. c. 14. f. 2.*

KNOW all men by these presents, &c. Whereas the
above bound A. O. was lately convicted before J. P.
esquire, one of his majesty's justices of the peace in and for
the county of ———— afore said, of keeping and using at
——— afore said in the said county, a greyhound to kill and
destroy the game ; And whereas the said A. O. hath since
his said conviction sued out his majesty's writ of certiorari to
remove the same, and the proceedings thereupon, before the
king himself wherever he shall be in England on ————
[the day of the return of the certiorari] : The condition of
the above obligation is such, that if the above bound A. O. do
and shall (according to the true intent and meaning of the
statute in that case made) well and truly pay to the said A. I.
within 14 days after the said conviction shall be confirmed, or
a procedendo granted thereupon, his full costs and charges
which he shall sustain touching or concerning the said conviction
and removal thereof by the said writ of certiorari ; then the
abovewritten obligation shall be void, otherwise of force.

I. Warrant against a higler having game in his
possession ; on the 5 *An. c. 14. f. 2.*

Westmorland. } To the constable of ————

WHEREAS A. I. of ———— hath this day made infor-
mation and complaint upon oath before me J. P. esquire,
one of his majesty's justices of the peace in and for the said
county, that on the ———— day of ———— now last past, A. O. of
——— in

— in the parish of — in the county aforesaid, innkeeper, at
 — aforesaid, in the parish and county aforesaid, in the house
 of him the said A. O. then and there had in his possession one
 hare [or, did offer to sell one hare, or as the case shall be]
 be the said A. O. being no ways qualified by the laws of this
 realm, to have the said hare in his custody or possession; against
 the form of the statute in that case made and provided: These
 are therefore to command you, to bring the said A. O. before
 me or some other of his majesty's justices of the peace for the
 said county, to answer the premisses, and to be further dealt
 withal according to law. Given under my hand and seal, the
 — day of — in the — year, &c.

K. Warrant to levy 5 l on the goods of a higher
 convicted of having game in his custody; on
 the 5 An. c. 14. s. 2.

Westmorland. } To the constable of —

WHEREAS A. O. of — in the parish of
 — in the county aforesaid, higler, is on this
 present — day of — in the — year of the
 reign of — duly convicted before me J. P. esquire, one
 of his majesty's justices of the peace in and for the said county,
 upon the oath of A. W. a credible witness, for that he
 the said A. O. on the — day of — in the —
 year of — at the parish of — aforesaid, in the
 county aforesaid, had in his custody and possession one hare, he
 the said A. O. being no way qualified by the laws of this
 realm to have the said hare in his custody or possession, against
 the form of the statute in that case made, by reason whereof,
 he the said A. O. hath forfeited the sum of 5 l. These
 are therefore to require you to levy the said sum of 5 l by
 distress of the goods of him the said A. O. and if within
 the space of [five] days next after such distress by you taken,
 the said sum of 5 l, together with reasonable charges of taking
 and keeping the said distress, shall not be paid, that then you
 do sell the said goods so by you distrained as aforesaid, and
 out of the money arising by such sale, that you do pay one
 half of the said sum of 5 l to A. I. of — yeoman, who
 informed me of the said offence, and the other half to the
 poor of the parish of — aforesaid, within which parish
 the said offence was committed; returning to him the said A. O.
 the

the overplus on demand, the reasonable charges of taking, keeping, and selling the said distress, being first deducted: And if sufficient distress cannot be had of the goods of the said A. O. about you certify the same to me together with the return of this precept. Given under my hand and seal the — day of — in the — year of —

L. Commitment on the same for want of distress;
on the 5 An. c. 14. s. 2.

Westmorland. { To the constable of — in the said county,
and to the keeper of the house of
correction at — in the said county.

WHEREAS A. O. of — in the said county, bigger, was on the — day of — duly convicted before me J. P. esquire, one of his majesty's justices of the peace in and for the said county, upon the oath of A. W. of — a credible witness, for that he the said A. O. on the — day of — in the — year of — at the parish of — aforesaid, in the county aforesaid, had in his custody and possession one hare, he the said A. O. being no way qualified by the laws of this realm to have the said hare in his custody or possession, against the form of the statute in that case made, by reason whereof he the said A. O. hath forfeited the sum of 5l. And whereas on the said — day of — in the year aforesaid, I did issue my warrant to the constable of — to levy the said sum of 5l by distress and sale of the goods of him the said A. O. and to distribute the same according as is directed by the said statute: And whereas it duly appears to me, as well on the oath of the said constable of — as otherwise, that he the said constable of — hath used his best endeavours to levy the said sum on the goods of the said A. O. as aforesaid, but that no sufficient distress can be found whereon to levy the same; These are therefore to require you the constable of — aforesaid, to carry the said A. O. to the said house of correction at — aforesaid, and deliver him to the said keeper thereof, together with this precept. And you the said keeper are hereby commanded to receive into your custody in the said house of correction him the said A. O. and him there safely to keep for the space of three months, without bail or mainprize; and for your so doing this shall be your sufficient warrant. Given under my hand and seal the — day of —

M. Mit-

M. Mittimus for carrying a gun; on the 33 H. 8.
c. 6. from Mr. Dalton.

Westmorland. { To the keeper of his majesty's gaol at
— in the county of — aforesaid,
and to his deputy or deputies there,
and to every of them.

FORASMUCH as this present day, A. I. of —
yeoman, and B. I. of — yeoman, did arrest and
bring before me at — in the said county, one A. O. late
of — in the said county, taylor, whom they had seen and
found the same day (as they said) shooting in a hand gun,
charged with powder and hail shot, at a coney, in a certain
place in — within the said county, called — contrary to
the law of the realm, and thereupon prayed that justice might be
done in that behalf: I John Moore, esquire, being the next
justice of the peace in the said county to the place aforesaid, did
then at — aforesaid, upon the said request, take the exami-
nation of the said A. O. and did also then and there hear the
proofs of them the said A. I. and B. I. touching the said of-
fence; And for that it did then manifestly appear unto me as
well by the testimonies of them the said A. I. and B. I. as also
by the plain confession of him the said A. O. that he the said
A. O. had not then lands, tenements, fees, annuities or offices,
to the yearly value of an hundred pounds, and that he had shot
in the said hand gun in the manner and form as is aforesaid:
I do send you herewithal the body of him the said A. O. as
lawfully convicted of the said offence before me, requiring you
in his majesty's name, to receive him into your said gaol, and
him there safely to keep, until he shall have truly paid the
pain and forfeiture of 10 l laid upon him for his said offence
by the statute made in the three and thirtieth year of the
reign of king Henry the eighth; that is to say, the one moiety
thereof to our sovereign lord the king, and the other moiety to
them the said A. I. and B. I. the first bringers of him before
me. And this shall be your sufficient warrant in this behalf.
Hereof fail you not, as you will answer for your contempt at
your peril. Given under my hand and seal at — aforesaid,
in the county aforesaid, the — day of — in the —
year of the reign of —.

N. Record of the conviction for carrying a gun;
on the 33 H. 8. c. 6. from Mr. Dalton.

Westmorland. **B**E it remembred, that on the — day
of — in the — year of the
reign of — A. I. of — yeoman, and B. I. of
— yeoman, one A. O. late of — in the county
aforesaid, taylor, found and saw, at — in the county
aforesaid, the day and year aforesaid, with a hand gun
charged with gun-powder and leaden ball shot, shooting and
discharging the said gun, at a certain coney then being in a
certain place there, called — against the form of the
statute in that case made and provided; and therefore the
day and year aforesaid, him the said A. O. at — afore-
said, they did arrest, and at — aforesaid before me
— esquire, one (and next unto the said place called
—) of the justices of our said lord the king, assigned
to keep the peace in the said county, and also to hear and de-
termine divers trespasses and other misdemeanors in the same
county committed, then with them did bring, requesting there-
upon justice to be done; which request being heard, I the
said J. P. at — aforesaid, the day and year aforesaid,
duly thereupon have examined the aforesaid A. O. at —
aforesaid, and the proofs of the aforesaid A. I. and B. I. in
this behalf have taken: And because that as well by the proofs
aforesaid, as by the confession of him the said A. O. at
— aforesaid, then and there it hath appeared to me
manifestly, that the aforesaid A. O. at — aforesaid,
when he had not in his own right, nor in the right of his
wife, to his own use, nor any other to the use of the said
A. O. had lands, tenements, fees, annuities or offices to the
yearly value of one hundred pounds, in the hand gun afore-
said, in manner and form aforesaid, did shoot, against the
form of the statute aforesaid; I the said J. P. the afore-
named A. O. at — aforesaid, the day and year afore-
said, to the next gaol of our said lord the king, at —
in the county aforesaid (of the trespass aforesaid before me
committed) have committed, there to remain until the penalty
and forfeiture of 10l of lawful money of Great Britain,
he shall truly pay or cause to be paid, to wit, one moiety
thereof to our said lord the king, and the other moiety there-
of to the said A. I. and B. I. the first bringers of the said
A. O. before me as is aforesaid. In witness of all which
I the aforesaid J. P. to these presents have put my seal.

Given

Given at ———— aforesaid, the day and year first above written.

- O. Conviction for killing deer, from Tremaine's Entries, 328, 329. which conviction was on the 13 C. 2. c. 10. but is here altered to grounds inclosed, to bring the offence within the 3 W. c. 10. which is done by the addition only of that single word [*inclosed*] with the alteration of the penalty.

Cumberland. **B**E it remembred that on the third day of September in the year of the reign of our lord Charles the second now king of, &c. the thirty-second, one Benjamin Granger of ——— gentleman, cometh before me John Aglionby, esquire, one of the justices of our said lord the king, assigned to keep the peace of our said lord the king in the said county of C. at G. in the same county, and giveth me to understand and be informed, that one James Dobson, late of ——— J. B. late of ——— and L. M. late of ——— on the 25th day of August in the year of the reign of our said lord the now king, the 32d aforesaid, in a certain park then of the most noble Henry duke of Norfolk, called Graystock park, in the parish of Graystock, in the said county, then and long before and yet being ground inclosed, wherein deer then were and long before had been usually kept, unlawfully hunted, and a certain fallow deer of the said duke then in the same park killed, took, and carried away, without the consent of the said duke then owner of the said park, or of Andrew Huddleston, esquire, then being chiefly intrusted with the custody of the same park, against the form of the statute in such case made and provided: And afterwards, to wit, on the aforesaid third day of September in the 32d year aforesaid, two credible witnesses, that is to say, J. H. of ——— and T. B. of ——— came before me the said justice assigned, &c. at G. aforesaid, and before me the said justice assigned, &c. upon their oath on the holy gospel of god to them then and there by me the aforesaid justice assigned, &c. by the authority of the statute aforesaid administred and given, do depose, swear, and say, and each of them doth depose, swear, and say, upon their oath aforesaid, that the aforesaid J. D. J. B. and L. M. on the aforesaid 25th day of August in the 32d year aforesaid, in the aforesaid park and ground inclosed of the aforesaid duke of Norfolk, in the parish of Graystock aforesaid, unlawfully hunted, and the aforesaid fallow deer of him the said duke, then in the said park and ground inclosed,

and killed, and carried away, without the consent of the same duke then owner of the said park and ground inclosed, or of the aforesaid A. H. esquire, then with the custody of the same park and ground inclosed as is aforesaid chiefly intrusted. And thereupon they the aforesaid J. D. J. B. and L. M. on the said 3d day of September in the 32d year aforesaid, before me the said justice assigned, &c. by the oath of two credible witnesses aforesaid, according to the form of the statute aforesaid, are, and every of them is convicted. And for the offence aforesaid, every of them the aforesaid J. D. J. B. and L. M. according to the form of the statute aforesaid, hath severally forfeited the sum of 30 l. one third part thereof to the aforesaid B. G. the informer in this behalf as is aforesaid, another third part thereof to the use of the poor of the said parish of G. within which parish the offence aforesaid was committed, and the other third part thereof to the duke aforesaid, owner of the deer aforesaid. In witness whereof I the aforesaid justice to this present record of the conviction as aforesaid, have set my hand and seal, at G. aforesaid, on the day and year first abovementioned.

John Aglionby.

P. Warrant of distress for hunting and killing deer ;
on the 3 W. c. 10. s. 2.

Westmorland. { To ———

WHEREAS A. O. of ——— yeoman, is this day duly convicted before me J. P. esquire, one of his majesty's justices assigned to keep the peace in the said county, and also to hear and determine divers trespasses and other misdemeanors in the said county committed, by the oath of A. W. of ——— yeoman, a credible witness, for that he the said A. O. on the ——— day of ——— in the ——— year of ——— in a certain park, then of Sir P. M. baronet, in the parish of ——— in the said county, then and long before and yet being ground inclosed, where-in deer then were and long before had been usually kept, unlawfully did hunt, and a certain fallow deer of the said Sir P. M. baronet, then in the same park did kill, take, and carry away, without the consent of the said Sir P. M. baronet, then owner of the said park, or of any other person then chiefly intrusted with the custody of the same park, against the form of the statute in such case made and provided; by reason whereof he the said A. O. hath forfeited the sum of 30 l. to be distributed as herein after is mentioned.

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These

These are therefore in his said majesty's name to command you to levy the said sum by distress of the goods and chattels of him the said A. O. And if within the space of [six] days next after such distress by you taken, the said sum of 30 l, together with reasonable charges of taking and keeping the said distress shall not be paid, that then you do sell the said goods and chattels so by you distrained as aforesaid; and out of the money arising by such sale, that you do pay one third part of the said sum of 30 l to A. I. of ——— in the said county, yeoman, who informed me of the said offence; and one third part unto the churchwardens or overseers of the poor of the said parish of ——— for the use of the poor of the said parish, and the other third part to the said ——— owner of the said deer; returning to him the said A. O. the overplus upon demand, the reasonable charges of taking, keeping, and selling the said distress being first deducted. And if sufficient distress cannot be had or found, by and on which the said sum of 30 l may be levied, you are hereby required to certify the same to me, within two days after the date of this present warrant. Given under my hand and seal, at ——— in the county aforesaid, the ——— day of ——— in the ——— year of the reign of ———.

Q. Commitment for want of distress, for hunting and killing deer; on the 3 W. c. 10. s. 2.

Westmorland. { To the constable of ——— in the said county, and to the keeper of the common gaol at ——— in the said county, and to the chief officer of the market town of ——— in the said county, and to every of them.

WHEREAS A. O. of ——— labourer, was on the ——— day of ——— duly convicted before me J. P. esquire, one of his majesty's justices assigned to keep the peace in the said county, and also to hear and determine divers felonies, trespasses, and other misdemeanors in the said county committed, by the oath of A. W. of ——— yeoman, a credible witness, for that he the said A. O. on the ——— day of ——— in the ——— year ——— in a certain park then of ——— esquire, in the parish of ——— in the said county, then and long before and yet being ground inclosed wherein deer then were and long before had been usually kept, unlawfully did hunt, and a certain fallow deer of the said ——— esquire, then in the same park did kill, take, and carry away, without the con-

sent of the said ——— then owner of the said park, or of any other person then chiefly intrusted with the custody of the same park, against the form of the statute in such case made and provided; by reason whereof he the said A. O. hath forfeited the sum of 30 l. And whereas on the said ——— day of ——— in the year aforesaid, I did issue my warrant to the constable of ——— to levy the said sum of 30 l by distress of the goods and chattels of him the said A. O. and to pay over the said sum of 30 l according as is directed by the statute aforesaid; And whereas it duly appears to me, as well on the oath of the said constable of ——— as otherwise, that he the said constable of ——— hath used his best endeavours to levy the said sum of 30 l on the goods and chattels of the said A. O. as aforesaid, and that no sufficient distress can be found whereon to levy the same: Therefore in pursuance of the statute aforesaid, I do hereby command you the said constable of ——— him the said A. O. to apprehend and safely to convey to the said common gaol at ——— aforesaid, in the county aforesaid, and him to deliver to the keeper thereof aforesaid, together with this precept: And I do hereby command you the said keeper of the gaol aforesaid, to receive into your custody in the said gaol him the said A. O. and him there safely to keep for the space of one whole year; saving that within the said year you deliver him the said A. O. to the chief officer of ——— being the next market town next adjoining to the place where the said offence was committed, or to his under officer or officers, together with this precept, who are hereby respectively required to set the said A. O. in the pillory in the said market town by the space of one hour on some market day. And hereof fail not, as you will respectively answer the same at your perils. Given under my hand and seal, at ——— in the said county, the ——— day of ——— in the year ———.

R. Warrant to search for venison or skins; on the
3 W. c. 10. s. 3.

Westmorland. } To the constable of ———

WHEREAS A. I. of ——— in the said county, yeoman, hath this day made oath before me J. P. Esquire, one of his majesty's justices of the peace in and for the said county, that divers fallow deer have of late been unlawfully killed in, and taken and carried away from the park and ground inclosed of ——— at ——— in the said county, and that he the said A. I. hath just cause to suspect, and doth suspect, that

venison or the skins of deer, or toys whereby to take and kill deer are concealed in the houses, outhouses, or other places belonging to the said houses of A. O. of — yeoman, and B. O. of — yeoman, at — aforesaid in the county aforesaid: These are therefore in his said majesty's name, and by virtue of the statute in that case made and provided, to require you that you do forthwith upon sight hereof, enter into and search the said houses, outhouses, and other places belonging to the said houses of them the said A. O. and B. O. at — aforesaid; and if on such search you shall there find any venison, or skin of any deer, or toys aforesaid, that you do apprehend the person or persons, in whose houses, outhouses, or other places aforesaid, such venison, skin, or toys shall be found, and him or them so apprehended do carry before some of his said majesty's justices of the peace in and for the said county, to be examined concerning the premisses, and further dealt withal according to law. Given under my hand and seal, the — day of — in the year —.

Gaming.

Gaming not an offence at common law.

Gaming house a nuisance.

Gaming houses prohibited by the 33 H. 8.

MR. Dalton says, that playing at cards and dice, and the like, are not prohibited by the common law; neither are they *mala in se*, of their own nature, but only prohibited by statute. *Dalt. c. 46.*

2. But it hath been said, that all common gaming houses are nuisances in the eye of the law, as being great temptations to idleness, and apt to draw together numbers of disorderly persons. *1 Haw. 198.*

3. By the statute of the 33 H. 8. c. 9. No person shall for his gain, lucre, or living, keep any common house, alley, or place of bowling, coyting, cloysh, cayls, half bowl, tennis, dicing table, or carding, or any unlawful game; on pain of 40 s a day. *f. 11.*

But it was resolved upon this clause, in the third year of J. 1. that if the guests in an inn or tavern, call for a pair of dice or tables, and for their recreation play with them, or if any neighbours play at bowls for their recreation, or the like, these are not within the statute; for altho' the games be used in any inn, tavern, or other house, yet if the house be not kept for gaming, lucre, or gain, but they play only for recreation, and for no gain to the owner of the house, this is not within the statute,

statute, nor is such person that plays in such house that is not kept for lucre or gain, within the penalty of that law. *Dalt. c. 46.*

And moreover, by the same statute it is further enacted, that every person using and haunting any the said houses and plays, and there playing, shall forfeit 6s 8d. 33 H. 8. c. 9. f. 12.

And all and every justices of the peace, mayors, sheriffs, and other head officers, may enter all such houses and places, where such games shall be suspected to be holden; and as well the keepers of the same, as also the persons there resorting and playing, may take, arrest, and imprison, and keep in prison, until the said keepers have found sureties to the king's use, to be bound by recognizance or otherwise, no longer to use, keep, or occupy any such house, play, game, alley, or place; and also that the persons there so found, be in like case bound by themselves, or with sureties, no more to play, haunt, or exercise from thenceforth, in, at, or to any of the said places, or at any of the said games. *id. f. 14.*

And the mayors, sheriffs, bailiffs, constables and other head officers within every city, borough, or town, shall make due search weekly, or at the furthest once a month, in all places where any such houses or places shall be suspected to be kept; and if they shall not make such search at the farthest once a month, if the case so require, every such person offending shall forfeit 40s for each month. *id. f. 15.*

And by the same act, no manner of artificer, handicraftsman, husbandman, apprentice, labourer, servant at husbandry, journeyman, or servant of artificer, mariners, fishermen, waterman, or any serving man, shall play at the tables, tennis, dice, cards, bowls, claff, coyting, logating, or any other unlawful game, out of *Christmas*, on pain of 20s, and in *Christmas* to play at the said games only in their master's houses, or in their master's presence; and also no person shall at any time play at bowls in open places out of his garden or orchard, on pain of 6s 8d. *id. f. 16.*

But any master may licence his servant to play at cards, dice, or tables with himself, or with any other gentleman openly in his house, or in his presence. *id. f. 22.*

And any nobleman, or other person having 100 l a year, may command or licence his servants, or family of his house, to play within the precinct of his house, garden, or orchard, at cards, dice, tables, bowls, or tennis,

as well among themselves, as others repairing to the same house. *id.* *f.* 23.

And all justices of the peace, mayors, bailiffs, sheriffs, and other head officers, and every of them, *finding or knowing* any person using unlawful games, contrary to this act, may commit every such offender to ward, there to remain without bail or mainprize, till he be bound by obligation to the king's use, in such sum as by the discretion of the said justices, or other such officers shall be thought reasonable, that they shall not from thenceforth use such unlawful games. *id.* *f.* 16.

And by the 2 G. 2. c. 28. Where it shall be *proved on the oath of two witnesses* before any justice of the peace, as well as where he shall find upon his own view, that any person hath used any unlawful game contrary to the said statute; the said justice shall have power to commit him to prison without bail, unless and until he shall enter into recognizance, with sureties, or without, at the discretion of the justice, that he shall not from thenceforth play at or use such unlawful game. *f.* 9.

And where any the forfeitures abovementioned shall be found within the precincts of any leet, the lord shall have one half, and the other half shall be to him that shall sue in any of the king's courts; and elsewhere, they shall be half to the king, and half to him that shall sue in like manner. 33 H. 8. c. 9. *f.* 18.

But by the 31 El. c. 5. All suits to be pursued upon any statute (that is, any statute then in force) for using any unlawful game, shall be sued and prosecuted, or otherwise heard and determined, in the general quarter sessions or assizes of the county where the offence shall be committed, or in the leet within which it shall happen, and not in any wise out of the county. *f.* 7.

And no privilege of parliament shall be allowed to any person, against whom a prosecution shall be commenced, for keeping any common gaming house, or place for playing at any prohibited game. 18 G. 2. c. 34. *f.* 7.

4. By the 30 G. 2. c. 24. If any person licensed to sell any sorts of liquors, or who shall sell or suffer the same to be sold in his house, outhouse, ground, or apartment thereto belonging, *shall knowingly suffer* any gaming with cards, dice, draughts, shuffle boards, mississippi, or billiard tables, skittles, nine pins, or with any other implement of gaming, in his house, outhouse, ground, or apartment thereto belonging, by any journeyman, labourers, servants, or apprentices; and shall be convicted thereof

Gaming in public houses prohibited by the 30 G. 2. c. 24.

thereof on confession, or oath of one witness, before one justice, within six days after the offence committed; he shall forfeit for the first offence 40 s, and for every other offence 10 l, by distress by warrant of such justice; three fourths of which shall be to the churchwardens for the use of the poor, and one fourth to the informer. *f. 14.*

And if any journeyman, labourer, apprentice, or servant, shall game in any house, outhouse, ground, or apartment thereto belonging, wherein any liquors shall be sold; and complaint thereof shall be made on oath before one justice where the offence shall be committed: he shall issue his warrant to the constable or other peace officer of the place wherein the offence is charged to have been committed, or where the offender shall reside, to apprehend and carry the offender before some justice of the place where the offence shall be committed, or where the offender shall reside; and if such person shall be convicted thereof by the oath of one witness or confession, he shall forfeit not exceeding 20 s, nor less than 5 s, as the justice shall order, every time he shall so offend and be convicted as aforesaid, one fourth to the informer, and three fourths to the overseers for the use of the poor; and if he shall not forthwith pay down the same, such justice shall commit him to the house of correction or some other prison of the place where he shall be apprehended, to be kept to hard labour for any time not exceeding one month, or until he shall pay the forfeiture. *f. 15.*

And any justice unto whom complaint upon oath shall be made, of any offence committed against this act, shall issue his warrant for bringing before him or some other justice of such place, the person charged with such offence; and the justice before whom he is brought shall hear and determine the matter, and proceed to judgment and conviction: and if it shall appear upon oath to the satisfaction of such justice, that any person within his jurisdiction can give material evidence on behalf of the prosecutor or of the person accused, and who will not voluntarily appear; he shall issue his summons to convene him to give his evidence; and if he shall neglect or refuse to appear on such summons, and no just excuse shall be offered, then (on proof upon oath of the summons having been duly served upon him) he shall issue his warrant to bring such witness before him; and on his appearance, if he shall refuse to be examined on oath, without offering just cause for such refusal, the justice shall commit him to the publick prison for any time not exceeding three months. *f. 16.*

Gaming.

And in all proceedings on this act, any person shall be admitted to be a witness, notwithstanding his being an inhabitant of the place wherein the offence shall have been committed. *f. 18.*

And the justice before whom any person shall be convicted upon this act, shall cause the conviction to be drawn up in the form or to the effect following;

To wit. **B**E it remembred, that on this — day of — in the — year of his majesty's reign A. B. is convicted before — of his majesty's justices of the peace for the said county of — [or, for the — riding, or division, of the said county of — or, for the city, liberty, or town of — as the case shall be] for — and — the said — do adjudge him, or her, to pay and forfeit for the same, the sum of — Given under — the day and year aforesaid.

The same to be written upon parchment, and transmitted to the next sessions, to be filed amongst the records; and if any person shall appeal to the said sessions, the justices there shall, upon receiving the said conviction, proceed to hear and determine the matter. *f. 19.*

And no certiorari shall be granted, to remove any proceedings on this act. *f. 20.*

And if any person convicted of any offence punishable by this act, shall think himself aggrieved by the judgment of the justice before whom he shall have been convicted, he may appeal to the next sessions, and the execution of the judgment shall in such case be suspended, the person convicted entering into recognizance at the time of the conviction, with two sureties in double the sum he shall have been adjudged to pay, upon condition to prosecute such appeal with effect, and to be forthcoming to abide the judgment and determination of the said sessions: and the sessions shall award such costs as shall appear just and reasonable to be paid by either party; and if the judgment shall be affirmed, the appellant shall immediately pay the sum adjudged to be forfeited together with such costs as the court shall award, or in default thereof shall suffer the pains and penalties by this act inflicted upon persons respectively who shall neglect to pay or shall not pay the forfeitures by this act to be paid. *f. 21.*

And no person punished by this act, shall be punished by any other law. *f. 22.*

5. By the 25 G. 2. c. 36. any house, room, garden, or other place kept for publick dancing, musick, or other entertainment

Gaming house
within London
and 20 miles
thereof.

entertainment

entertainment of the like kind, in *London*, or within 20 miles thereof, without licence as hereafter following (except the theatres of *Drury-lane*, *Covent Garden*, the *Hay-market*, and other entertainments exercised by letters patents or licence of the crown, or of the lord chamberlain) shall be deemed a disorderly house or place, and the keeper thereof shall forfeit 100 l, with full costs, to him who shall sue (in six months) in any of the courts at *Westminster*. And the person who shall appear to act as master, or as having the management of such disorderly house, shall be deemed a keeper thereof.

Which said licence shall be granted at the last preceding *Michaelmas* sessions, and shall be signed and sealed by four justices in open court, and afterwards be publicly read by the clerk of the peace, with the names of the justices subscribing the same; and no licence shall be granted at any adjourned sessions; nor shall any fee be taken for the same. And there shall be inserted in such licence, and made conditions thereof, that the words following shall be affixed in large capital letters over the door or entrance of every such licensed house or place, *viz.* *Licensed pursuant to act of parliament of the twenty-fifth of king George the second*; and that it shall not be opened before five in the afternoon. And in case of a breach of either of the said conditions, the licence shall be forfeited, and revoked by the justices at the next sessions, and shall not be renewed.

And to encourage prosecutions against persons keeping bawdy houses, gaming houses, or other disorderly houses, the constable, on notice given him in writing by any two inhabitants of the parish paying scot and lot, of any person keeping such house, shall forthwith go with them to a justice of the peace; and shall (on their making oath that they believe the contents of such notice to be true, and entering into a recognizance of 20 l each to produce evidence of the offence,) enter into a recognizance of 30 l, to prosecute with effect such person at the next sessions or assizes, as to the justice shall seem meet: and on the constable entering into such recognizance, the justice shall issue his warrant for bringing the accused persons before him, and shall bind them over to appear at the said sessions or assizes, and shall also, if he thinks fit, demand and take surety for their good behaviour in the mean time.

And if the constable shall neglect or refuse, upon such notice, to go before a justice, or to enter into recognizance,

zance, or shall be wilfully negligent in carrying on the prosecution, he shall forfeit 20 l to each of the said inhabitants.

And on trial, any person may give evidence against the defendant, notwithstanding his being a parishioner, or having entred into such recognizance.

And the constable shall be allowed all the reasonable expences of the prosecution, to be ascertained by two justices; and shall be paid the same by the overseers of the poor: and if such person be convicted, the overseers shall also forthwith pay 10 l to each of such inhabitants, on pain of forfeiting double to the said persons.

And no indictment of such offence shall be removed by certiorari.

Losing or winning 10 l or upwards at a time, or 20 l in 24 hours.

6. By the 9 *An. c. 14.* Any person who shall at any time or sitting, by playing at cards, dice, tables, or other game whatsoever, or by betting on the sides of such as do play, *lose* to any one or more persons so playing or betting in the whole the sum or value of 10 l, and shall pay or deliver the same, or any part thereof; the person so losing and paying or delivering the same, shall be at liberty in three months to sue for and recover the same with costs, in any court of record: and if he shall not sue in three months, it shall be lawful for any person to sue for and recover the same and treble value, with costs; half to such person who shall sue, and half to the poor. *f. 2.*

And every person who shall so be liable to be sued for the same, shall be obliged and compellable to answer on oath such bill as shall be preferred against him, for discovering the sum of money or other thing so won. 9 *An. c. 14. f. 3.* 18 *G. 2. c. 34. f. 3.*

Or other game whatsoever] *M. 15 G. 2. Goodburn and Marley.* It was determined, that *horse races* are within these general words. *Str. 1159.* So also in the case of *Blaxton and Pye, E. 6 G. 3. 2 Wilson. 309.*

And in the case of *Lynall and Longbotham, M. 30 G. 2.* it was admitted on all hands that a *foot race* also is within the statute, and that a footman running against time is a foot race; but in this case, for a flaw in the declaration, in not laying the fact close enough to the words of the statute, the defendant had judgment. 2 *Wilson. 36.*

And by the same statute of the 9 *An. c. 14.* If any person shall, at any one time or sitting, *win* of any one or more

more person or persons, above the sum or value of 10 l; he shall upon conviction on indictment or information, forfeit five times the value of the sum of money or other things so won, to be recovered by such person as shall sue for the same. *f. 5.*

And by the 18 G. 2. c. 34. If any person shall win or lose at play, or by betting, at any one time, the sum or value of 10 l, or within the space of 24 hours the sum or value of 20 l; he shall be liable to be indicted for such offence, in six months, either in the king's bench or at the assizes; and being convicted, shall be fined five times the value of the sum won or lost, which (after such charges as the court shall judge reasonable, allowed thereout to the prosecutor and evidence) shall go to the poor. *f. 8.*

And if any offender shall discover another offender, so that he be convicted, the discoverer shall be discharged from all penalties by reason of such offence, if not before convicted thereof, and shall be admitted as an evidence to prove the same. *f. 9.*

But nothing in this act shall repeal the aforesaid act of 9 An. id. *f. 10*

7. If any person shall play at cards, dice, tables, tennis, bowls, kittles, shovelboard, or any other pastime or game whatsoever (other than for ready money) or bet on the sides of such as shall play, and shall lose any sum or other thing, exceeding 100 l, at any one time or meeting, upon ticket, or credit, or otherwise, and shall not pay down the same at the time when he shall lose the same; in such case he shall not be bound to make it good, but the contract for the same, and for every part thereof, and all assurances and securities for the same shall be void; and the winner shall forfeit treble value of all such sums as he shall so win above 100 l, half to the king, and half to him that shall sue in one year in any of the courts of record at *Westminster*, with treble costs. 16 C. 2. Losing above 100 l at a time

6. 7. *f. 3.*
In the case of *Humphries and Rigby, M. 1698*. A bill was brought, to be relieved against a bond for money won at all fours. The plaintiff was a distiller, and the defendant a tapster at a bowling green. And it appearing that the defendant laid the cards, and turned up the knave of clubs, which was Jack, several times together; and being an unreasonable sum for such persons to venture; the plaintiff was relieved, and the bond ordered to be delivered up, altho' this case was not within the statute, the bond being for less than 100 l. For equity always relieved

Securities to be
void.

lieved before the statute, where any fraud appeared. 2
Abr. Eq. Caf. 184.

8. And all notes, bills, bonds, judgments, mortgages, or other securities, where the whole or any part of the consideration shall be for money or any other valuable thing won by playing at cards, dice, tables, tennis, bowls, or other game whatsoever; or by betting on the sides of such as do game; or for the reimbursing or repaying any money knowingly lent or advanced, at the time and place of such play, to any person so gaming or betting, or that shall (during such play) so play or bett, —shall be void: And where such securities shall be of lands, or such as incumber or affect the same; they shall enure and be to the sole use and benefit of, and devolve upon such person as might have such lands, in case the said grantor, or person so incumbering the same, had been dead: And all conveyances to hinder them from devolving on such person, shall be void. 9 *An. c.* 14. *f.* 1.

Securities] *H.* 19 *G.* 2. *Barjeau and Walmsley.* The plaintiff and defendant gamed together, at tossing up for five guineas at a time. And the plaintiff having won all the defendant's ready money lent him ten guineas at a time, and won it, till the defendant had borrowed 120 guineas. In an action for money lent, it was insisted for the defendant, that by the 9 *An. c.* 14. the plaintiff could maintain no action; for by that act, all securities for money lent to game with shall be void; and the borrowing on an agreement to pay, is a security. But *Lee Ch. J.* held that this was not a case within the act, for there is not the word *contract*, as in the statute of usury; and the word *securities*, as it stands in this act, must mean lasting liens upon the estate. The parliament might think there would be no great harm in a parol contract, where the credit was not like to run very high; and therefore confined the act to written securities. Wherefore the plaintiff obtained a verdict for 126 l. *Str.* 1249.

In the case of *Rawdon and Shadwell*, *Apr.* 23, 1755. A bill was brought by the plaintiff for an injunction, and that the defendant might deliver up the plaintiff's bond for 1150 l, for money lost at play, and might refund a sum of 150 l, paid by the plaintiff in part of the said bond. It appeared, that the plaintiff was a lieutenant, and the defendant a captain in Cotterel's regiment; and about 14 years ago, being quartered at Leeds in Yorkshire, the defendant

defendant won of the plaintiff in one evening the sum of 1150 l. The plaintiff was under age ; and being so, gave a bond for the money to the defendant ; and afterwards, when of age, paid 150 l in part. It was insisted for the plaintiff, that the securities by the statute of the 16 C. 2. were totally void, and ought to be delivered up ; that the property of an infant in money lost at play, is not altered, and therefore trover would lie ; and the statute of the 9 An. was mentioned, and a case in 2 Mod. 91. For the defendant, it was urged, that the plaintiff on the same evening won of another in the same company, to wit, the surgeon of the regiment, a larger sum than the 1150 l, which has been paid by him. That fair gaming is not *malum in se*. It is only prohibited *sub modo*, That the case cited was of money lost with false dice, which the court takes cognizance of as a cheat. That the statute of An. gives the court jurisdiction only as to a discovery. That as to the 150 l, it was paid after he came of age ; and if the court should order the defendant to refund at the distance of 14 years, it would occasion an infinite number of applications. That the statute of 16 C. 2. gives no remedy to recover money already paid. That there has been too long an acquiescence. That money paid, even in cases of bribery and corruption, cannot be recovered at law. That the statute of An. has directed an action within three months, for money lost and paid at play.—The lord chancellor said, the decree he should make was not founded on any imputation on the character of the defendant, who had put in a very candid answer. But this is a breach of the law, from a false principle of honour. And he was of opinion, that the plaintiff was intitled to the whole relief prayed ; that a party may come into this court to have a void security delivered up ; that refunding the money is of course, as the statute has made the security void to all intents and purposes.

9. And any two justices may cause to come, or to be brought before them, every person whom they shall have just cause to suspect to have no visible estate, profession, or calling, to maintain themselves by, but do for the most part support themselves by gaming ; and if such person shall not make it appear to the said justices, that the principal part of his expences is not maintained by gaming, they shall require of him sufficient securities for his good behaviour for 12 months, and in default of his finding such securities, shall commit him to the common gaol, until

Persons suspected
of supporting
themselves by
gaming.

until he shall find such securities as aforesaid. 9 *An. c. 14*.
f. 6.

And if he shall, during the time for which he shall be bound, at any one time or sitting, play or bet for any sums or other thing exceeding in the whole the value of 20 s; such playing shall be deemed a forfeiture of the recognizance. *f. 7.*

Cheating.

10. If any person shall by any fraud, unlawful device, or other ill practice in playing at cards, dice, tables, tennis, bowls, kittles, shovelboard; or by cockfightings, horse races, dog matches, foot races, or other pastimes or games; or by bearing a share in the stakes; or by betting, on the sides of such as shall play, act, ride, or run as aforesaid,-----win any sum or other valuable thing; he shall forfeit treble the value, half to the king and half to the party grieved (if he shall sue in six months), otherwise to any person who shall sue in one year next after the said six months, in any of the courts of record at *Westminster*, with treble costs. 16 *C. 2. c. 7. f. 2.*

And by the 9 *An. c. 14.* If any person shall by any fraud or shift, coufenage, circumvention, deceit, or unlawful device, or ill practice whatsoever, in playing at cards, dice, tables, tennis, bowls, or any the games aforesaid, or bearing a share in the stakes, or betting on the sides of such as do play, win any sum of money or other valuable thing, and shall be convicted thereof upon indictment or information; he shall forfeit five times the value of such money or other thing so won, and shall be deemed infamous and suffer such corporal punishment as in cases of wilful perjury; and such penalty to be recovered by such person as shall sue for the same, by such action as aforesaid. *f. 5.*

T. 9 G. 2. K. and Luckup. The defendant was convicted on an information upon this act, which says, that he shall forfeit five times the value, to be recovered by a common informer, upon conviction. And it was moved, that a fine should be set upon the defendant, if he refused to speak with the prosecutor. But by the court, All the judgment that we can give is, *that he is convicted*; and a new action must be brought upon that judgment for the forfeiture, which was thought sufficient to deter the offenders. In the case of recusancy, there is no other judgment. And the defendant was discharged, without any fine or costs. *Str. 1048.*

Quarrelling.

11. And for the preventing such quarrels as may happen on the account of gaming; if any person shall assault and

and beat, or challenge to fight, any other person whatsoever, on account of any money won by gaming, playing, or betting, at any the games aforesaid, he shall on conviction thereof by indictment or information, forfeit to the king all his goods and chattels and personal estate whatsoever, and shall also suffer imprisonment without bail or mainprize, in the common gaol of the county where the conviction shall be had, during the term of two years. *9 An. c. 14. s. 8.*

12. It is generally provided by the several statutes, that nothing therein shall hinder any person from playing at any the games aforesaid, within any of the king's royal palaces, where he shall then reside. *Royal palaces excepted.*

13. By the *10 & 11 W. c. 17.* All lotteries are declared to be publick nuisances; and all grants, patents, and licences, for such lotteries, to be against law. *Lottery, a nuisance.*

f. 1.
14. No person shall expose to be played, drawn, or thrown at, or shall play, draw, or throw at any lottery, either by dice, lots, cards, balls, or any other numbers or figures, or any other way whatsoever; and every person who shall expose to be played, drawn, or thrown at, any such lottery, play, or device, shall forfeit 500 l, one third to the king, one third to the poor, and one third with double costs to him that shall sue in the courts at *Westminster*; and the offenders shall likewise be prosecuted as common rogues, according to the statutes in that case made and provided. *10 & 11 W. c. 17. s. 2.* *Keeping or playing at a lottery.*

And every person who shall play, throw, or draw at any such lottery, play, or device, shall forfeit 20 l in like manner. *f. 3.*

And all justices of the peace, mayors, constables and other civil officers shall use their utmost endeavours to prevent the drawing of any such unlawful lottery, by all lawful ways and means; and every person who shall set up, or by writing or printing publish the setting up any such unlawful lottery, with intent to have such lottery drawn, shall forfeit 100 l, one third to the king, one third to the poor, and one third with full costs to him who shall sue in the courts at *Westminster*. *9 An. c. 6. s. 56.*

15. Every person who shall keep any office or place, for making insurances on marriages, births, christnings, or service, or any other office or place, under the denominations of sales of gloves, fans, cards, numbers, or the queen's picture, for the improvement of small sums of

Sales of lands
or goods; and
chances in pub-
lick lotteries.

of money, shall forfeit 500 l; one third to the king, one third to the poor, and one third with full costs to him who shall sue. And every printer, or other person, who shall by writing or printing publish the setting up or keeping any such office or place, shall forfeit 100 l in like manner. 10 *An. c. 26. f. 109.*

16. Every person who shall keep any office or place, under the denomination of sales of houses, lands, advowsons, presentations to livings, plate, jewels, ships, goods, or other things, for the improvement of small sums of money; or shall sell or expose to sale the same or any of them, by way of lottery, or by lots, tickets, numbers, or figures; or shall make, print, advertise, or publish proposals or schemes for advancing small sums of money by several persons, amounting in the whole to large sums, to be divided among them by the chances of the prizes in some publick lottery; or shall deliver out tickets, to the persons advancing such sums, to intitle them to a share of the money so advanced, according to such proposals or schemes; or shall make, print or publish, any proposal or scheme of the like nature, under any denomination whatsoever,—and shall be thereof convicted, on oath of one witness, by two justices where the offence shall be committed, or the offender shall be found, he shall, over and above any penalties by any former act made against private lotteries, forfeit 500 l, one third to the king, one third to the informer, and one third to the poor, to be levied by distress and sale by warrant of such justices, and shall also by such justices be committed to the county gaol without bail for one whole year, and from thence till the said sum of 500 l shall be paid: Provided that persons aggrieved may appeal to the next quarter sessions. And every person who shall be adventurer in, or any way contribute on the account of any such sales, lotteries, proposals, or schemes, shall forfeit double the sum contributed, with costs, half to the king, and half to him who shall sue in the courts at Westminster. 8 *G. c. 2. f. 36, 37.*

And by the 12 *G. 2. c. 28.* If any person shall erect, set up, continue, or keep, any office or place, under the denomination of a sale of houses, lands, advowsons, presentations to livings, plate, jewels, ships, goods, or other things by way of lottery, or by lots, tickets, numbers or figures, cards, or dice; or shall make, print, advertise, or publish proposals or schemes for advancing small sums by several persons, amounting in the whole to large sums,

to be divided among them by chances of the prizes in some publick lottery established by act of parliament, or shall deliver out tickets to the persons advancing such sums, to intitle them to a share of the money so advanced, according to such propofals or schemes; or shall expose to sale any houses, lands, advowsons, presentations to livings, plate, jewels, ships, or other goods, by any game, method, or device whatsoever, depending upon, or to be determined by any lot or drawing, whether it be out of a box or wheel, or by cards or dice, or by any machine, engine, or device of chance of any kind whatsoever; — he shall, on conviction before any justice of the peace (or mayor) on the oath of one witness, or view of such justice, or confession, forfeit 200l, by distress and sale, by warrant of one justice of the county or town where the offence shall be committed; which said forfeiture (after deducting reasonable charges of the prosecution) shall go one third to the informer, and two thirds to the poor of the parish (except in *Bath*, where the said two thirds shall go to the poor of the hospital there).

f. 1.

And if the offender shall not have sufficient goods, whereon to levy the penalties, or shall not immediately pay or give security for the same; the justice before whom he shall be convicted, may commit him to the common gaol, not exceeding six months. *f. 8.*

And if any witness shall neglect or refuse to appear, upon summons, or shall refuse to give evidence, or give false evidence; he shall forfeit 50l, by distress, by warrant of the person issuing such summons: and if he have not sufficient goods whereon to levy the 50l, he shall be committed to the common gaol for six months. 18 G. 2.

34. *f. 4.*

But if any person think himself aggrieved by the judgment of any justice or mayor, he may appeal to the next sessions, giving reasonable notice to the prosecutor, and entering into a recognizance before some justices of the peace where the conviction was made, with two sureties, on condition to try such appeal at such next sessions. And if the conviction shall be affirmed, the party appealing shall pay to the prosecutor treble costs. 12 G. 2. c. 28. *f. 5.*

And no conviction shall be quashed by the sessions for want of form; nor shall be removed by certiorari, till after determination in the sessions. *id. f. 6.*

And if any justice, or mayor, shall neglect his duty herein; he shall forfeit 10 l. with full costs, half to him that shall sue (in six months) in any court of record or at the assizes, and half to the poor. *id. f. 9.*

Moreover, every such sale of houses, lands, advowsons, presentations, plate, jewels, ships, goods, or other things, by any game, lottery, machine, engine, or other device, depending upon any chance or lot, shall be void; and the same being exposed to sale in manner aforesaid, shall be forfeited to such person as shall sue for the same in any court of record, or at the assizes. *id. f. 4.*

And, finally, every person who shall be an adventurer in any of the said games, lotteries, or sales, shall forfeit 50 l. in like manner. *id. f. 3.*

Ace of hearts,
faro, basset, and
hazard.

17. The games of ace of hearts, faro, basset, and hazard, shall be deemed games, or lotteries by cards or dice; and every person who shall set up, or keep these games, shall be liable to all the abovementioned penalties, for setting up or keeping any the games or lotteries in this act mentioned. 12 G. 2. c. 28. f. 2.

And every person who shall play, set at, stake, or punt at any of the said games, shall forfeit 50 l. in like manner. f. 3.

Passage.

18. Also the game of passage, and every other game with one or more die or dice, or with any other instrument, engine, or device in the nature of dice, having one or more figures or numbers thereon (back-gammon, and the other games played with the back-gammon tables, only excepted), shall be deemed games or lotteries by dice, within the said act of 12 G. 2. c. 28.—13 G. 2. c. 19. f. 9.

Roly poly.

19. Also by the 18 G. 2. c. 34. No person shall keep any house, room, or place for playing, or suffer any person within such place to play at roly poly, or any other game with cards or dice already prohibited by the laws of this realm; and if any person shall keep such house, or suffer any person to play at roly poly, or other game with cards or dice prohibited by law, he shall be liable to the penalties and prosecution, as by the said act of the 12 G. 2. c. 28.—18 G. 2. c. 34. f. 1.

And if any person shall play at roly poly, or any game with cards or dice prohibited by law; he shall be liable to the penalties and prosecution, as by the said act of the 12 G. 2.—18 G. 2. c. 34. f. 2.

Foreign lotteries.

20. If any person shall, by colour of any grant from any foreign prince or state, set up any lottery, or undertaking

in the nature of a lottery, under any denomination whatsoever; or shall make, print, or publish any proposal for any such lottery or undertaking; or shall sell or dispose of any ticket in any foreign lottery; and shall be convicted thereof, on oath of one witness, before two justices where the offence shall be committed, or the offender shall be found, he shall over and above any penalties by former acts against unlawful lotteries, forfeit 200 l, one third to the king, one third to the informer, and one third to the poor, to be levied by distress by warrant of such justices; and shall also by them be committed to the county gaol for one year, and from thence till the said sum of 200 l be paid: Provided, that persons aggrieved may appeal to the next quarter sessions. 9 G. c. 19. s. 4, 5.

And by the 6 G. 2. c. 35. If any person shall sell, procure, or deliver any ticket, receipt, chance, or number in any foreign or pretended foreign lottery, or in any class, part or division thereof, or in any undertaking in the nature of a lottery; or shall sell, procure, or deliver any ticket, receipt, chance, or number in any duplicate or pretended duplicate of any foreign or pretended foreign lottery; or shall receive any money for any such ticket, receipt, chance, or number, or in consideration of any money to be repaid in case any ticket or number in any foreign or pretended foreign lottery, or any class, part, or division thereof, shall prove fortunate; and shall be convicted thereof in the courts at *Westminster*, or on the oath of one witness before two justices where the offence shall be committed, or the offender shall be found; he shall forfeit 200 l, one third to the king, one third to the informer, and one third to the poor; the same (in case of conviction before the justices) to be levied by distress by warrant of such justices; and shall also be committed to the common gaol for a year, and from thence till the 200 l be paid; provided, that persons aggrieved may appeal to the next quarter sessions. s. 29, 30.

21. No person, other than the plaintiff and defendant, shall be incapacitated from being a witness, touching any offence against the laws for preventing excessive and dissipated gaming, by reason of having played, betted, or taken at any prohibited game. 18 G. 2. c. 34. s. 5.

How far an offender may be a witness.

Gaol and gaoler.

For breaking of gaol, see *Prison breaking*.

There is no word in the English tongue that hath suffered so much abuse as the word *gaol*. It is frequently written *goal*; whereas the words are totally different both in sense and pronunciation. *Goal* is the starting and ending post at a horse race: and to send a man thither instead of sending him to prison, is not consistent with that strictness which is justly required by our laws in cases penal. It is a fault of which justices' clerks and printers are equally guilty. — Whether a gaoler is obliged to receive a commitment, addressed not to him but to another person, is a point that hath not yet been considered.

- I. Building and repairing of gaols.*
- II. Who shall have the keeping of gaols.*
- III. Gaoler shall receive criminals.*
- IV. How they shall be maintained.*
- V. Selling of strong liquors in gaols.*
- VI. How prisoners may be set on work.*
- VII. How they shall be restrained and kept.*
- VIII. Of clergymen to officiate in gaols.*
- IX. How prisoners shall be delivered.*
- X. Of gaolers permitting escapes.*
- XI. Concerning debtors.*
- XII. Concerning the prisons of the King's bench and Marshalsea.*

I. Building and repairing of gaols.

THE justices, or the greater number of them, within the limits of their commission, upon presentment of the grand jury at the assizes. (or sessions, 12 G. 2. c. 29. s. 13.) of the insufficiency or inconveniency of the county gaol, may contract with any person for the building, finishing, or repairing the same. 11 & 12 W. c. 19. s. 1, 2.

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The expence thereof to be paid by the treasurer, out of the general county rate. 12 G. 2. f. 29.

But this shall not extend to gaols held by inheritance; nor to charge any persons in any town or liberty which have common gaols for felons, and commissioners of assize or gaol delivery, for any assessment to the making the common gaol for the shire. 11 & 12 W. c. 19. f. 4. 5.

II. Who shall have the keeping of gaols.

The gaol itself is the king's, but the keeping thereof is incident to the office of the sheriff, and inseparable from it; except such gaols whereof any person have the keeping by inheritance or succession. 14 Ed. 3. f. 1. c. 10. 19 H. 7. c. 10. 2 Inst. 589.

And therefore the sheriffs shall put in such keepers for whom they will answer. 14 Ed. 3. f. 1. c. 10.

But by the 3 G. c. 15. f. 10. None shall buy the office of gaoler, on pain of 500 l; half to the king, and half to him that shall sue.

And a gaoler in fact, is as much punishable for a misdemeanor in his office, as if he were a rightful gaoler. 2 Haw. 134.

III. Gaoler shall receive criminals.

All felons shall be imprisoned in the common gaol, and not elsewhere. 5 H. 4. c. 10.

And if the gaoler refuses to receive a felon, or take any thing for receiving him, he shall be punished for the same by the justices of gaol delivery. 4 Ed. 3. c. 10. Dalt. c. 170.

But vagrants and other criminals, offenders, and persons charged with small offences, may for such offences, or for want of sureties, be committed either to the common gaol, or house of correction, as the justices in their judgment shall think proper. 6 G. c. 19.

IV. How they shall be maintained.

Lord Coke says, the gaoler cannot refuse the prisoner victuals, for he ought not to suffer him to die for want of sustenance. 1 Inst. 295.

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But this is denied by others; and as there are several statutes which provide for the maintenance of prisoners, without supposing the gaoler any way obliged to it, it seemeth that this opinion is not maintainable. *Bac. Abr.* Gaol, gaoler. F.

For by the 14 *El.* c. 5. and 12 *G.* 2. c. 29. they are to be provided for by a sum to be paid out of the general county rate, by the high constables, to such sufficient persons dwelling nigh the gaols, as shall be appointed by the justices in open sessions, who shall be there ready to receive it.

V. Selling of strong liquors in gaols.

By the 24 *G.* 2. c. 40. No licence shall be granted for retailing *spirituous liquors* within any gaol or prison; and if the gaoler shall sell, lend, use, or give away, or suffer the same (except by way of medicine) he shall forfeit 100*l*, half to the king, and half with full costs to him who shall sue. *f.* 17.

And any justice, on information on oath, that *spirituous liquors* are kept or disposed of in such gaol, may enter and search, or issue his warrant to search for, and seize, and stave, and destroy the same. *f.* 18.

And if any person shall endeavour to bring any *spirituous liquors* into such gaol, the gaoler or his servants may apprehend and carry him before a justice; and if by the oath of one witness or otherwise such person shall be convicted, he shall be committed to prison or to the house of correction, not exceeding three months, unless he shall immediately pay down such fine, not exceeding 20*l*, and not less than 10*l*, as the justice shall impose, to be paid half to the informer, and half to the poor of such gaol. *f.* 19.

And a copy of the three clauses above, shall be hung up in each gaol, on pain of the gaoler forfeiting 40*s*, to be levied by warrant of one justice, on conviction on the oath of one witness: And any justice may enter and demand a sight of such copy, and if not shewn to him, he shall immediately convict such gaoler: one half of the said penalty to be to the informer, and the other (or the whole if there be no informer) to the poor of such gaol. *f.* 20.

And by the 29 *G.* 2. c. 12. No person shall retail *ale, beer*, or other liquors, in any prison, without being licensed in like manner as *alehouse-keepers*.

Fl. How

VI. How prisoners may be set on work.

The justices in their general sessions, if they find it needful, may provide a stock of such materials as they find convenient for the setting poor prisoners on work, to be paid for by the treasurer out of the general county rate; and may pay and provide fit persons to oversee and set such prisoners on work; and make such orders for accounts concerning the premisses, as shall be thought needful, and for punishment of neglects and other abuses, and for bestowing the profits arising by the labour of the prisoners for their relief. Provided that the sum to be so paid do not exceed the rate of 6d a week for any one parish. 19 C. 2. c. 4. s. 1. 12 G. 2. c. 29.

VII. How they shall be restrained and kept.

The county gaol is the prison for malefactors; but prisoners for debt, where escape lies against the sheriff for their escaping, may be kept in what place the sheriff pleases. *L. Raym.* 136.

By the 31 C. 2. c. 2. if any person shall be committed to any prison, for any criminal or supposed criminal offence, he shall not be removed from thence, unless it be by *habeas corpus* or some other legal writ; or where he is removed from one prison or place to another, within the same county, in order to his trial or discharge; or in case of sudden fire or infection, or other necessity: On pain that the person signing any warrant for such removal, and the person executing the same, shall forfeit for the first offence 100l, and for the second 200l, to the party grieved. s. 9.

But on emergent occasions, as in case of infectious diseases, the sheriff or gaoler, with the advice and consent of three or more justices (12.) may, if they shall find it needful, provide other safe places (with the owner's consent) for the removal of sick or other persons out of the usual gaols. 19 C. 2. c. 4. s. 2.

By the 22 & 23 C. 2. c. 20. The gaoler shall not put, keep, or lodge prisoners for debt and felons together in one room or chamber; but they shall be put, kept, and lodged separate and apart from one another in distinct rooms; on pain of forfeiting his office, and treble damages to the party grieved. s. 13.

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Nevertheless it seemeth generally in all cases where a man is committed to prison, especially if it be for felony, or upon an execution, or but for a trespass or other offence, every gaoler ought to keep such prisoner in safe and close custody; safe, that he cannot escape; and close, without conference with others or intelligence of things abroad. *Dalt. c. 170.*

And therefore if the gaoler shall license his prisoner to go abroad for a time, and then to come again, or to go abroad with a keeper, tho' he come again, yet these are escapes. *Dalt. c. 170.*

And hereupon it is lawful for the gaoler to hamper a felon with irons to prevent his escape. 1 *H. H. 601. Dalt. c. 170.* and it is said, that a gaoler is no way punishable for keeping even a debtor in irons. 2 *Haw. 152.*

But the learned editor of *Hale's History* observes, that this liberty even in the case of a felon (much more in the case of a prisoner for debt) can only be intended, where the officer has just reason to fear an escape; as where the prisoner is unruly, or makes any attempt to that purpose; but otherwise, notwithstanding the common practice of gaolers, it seems altogether unwarrantable, and contrary to the mildness and humanity of the laws of *England*, by which gaolers are forbidden to put their prisoners to any pain or torment. And lord *Coke*, 2 *Inst. 381.* is express, that by the common law it might not be done. 1 *H. H. 601.*

And if the gaoler keep the prisoner more strictly than he ought of right, whereof the prisoner dieth, this is felony in the gaoler by the common law: And this is the cause, that if a prisoner die in gaol, the coroner ought to sit upon him; and if the death was owing to cruel and oppressive usage on the part of the gaoler or any officer of his, it will be deemed wilful murder in the person guilty of such duress. 3 *Inst. 91. Fost. 321, 322.*

But if a criminal, endeavouring to break the gaol, assault his gaoler, he may be lawfully killed by him in the affray. 1 *Haw. 71. 1 H. H. 496.* For gaolers and their officers are under the same special protection that other ministers of justice are. And therefore if in the necessary discharge of their duty they meet with resistance, whether from prisoners in civil or criminal suits, or from others in behalf of such prisoners, they are not obliged to retreat as far as they can with safety, but may freely and without retreating repel force with force. And if the party so resisting

resisting happeneth to be killed, this on the part of the gaoler, or his officer, or any person coming in aid of him, will be justifiable homicide. On the other hand, if the gaoler, or his officer, or any person coming in aid of him, should fall in the conflict, this will amount to wilful murder in all persons joining in such resistance. It is homicide committed in defiance of the justice of the kingdom. *Fest. 321.*

But forasmuch as the gaol is intended, in most cases, for custody and not for punishment; and confinement it self, especially in such dismal abodes as it is to be feared many of the gaols are, is sufficiently afflictive and disconsolate; human nature will plead for those miserable objects, that their condition be rendred as tolerable as the case will admit of; particularly with regard to cleanliness, which is the parent of health; and wholesome air, which is life itself. A remarkable effect of want of care in this respect, Sir *Michael Foster* takes notice of, in the case of one Mr. *Clarke*, who was brought to his trial at the *Old Bailey* sessions in April 1750. It being a case of great expectation, the court and all the passages to it were extremely crowded. The weather also was hotter than is usual at that time of the year. Many people who were in court, were sensibly affected with a very noisome smell. And it appeared soon afterwards, upon an inquiry ordered by the court of aldermen, that the whole prison of *Newgate*, and all the passages leading thence into the court, were in a very filthy condition, and had long been so. What made these circumstances to be at all attended to was, that within a week or ten days at most after the sessions, many people who were present at Mr. *Clarke's* trial, were seized with a fever of the malignant kind, and few who were seized recovered. The symptoms were much alike in all the patients; and in less than six weeks the distemper intirely ceased. At the time this disaster happened, there was no sickness in the gaol, more than is common in such places. Which circumstance, that distinguisheth this from most of the cases of the like kind which we have heard of, suggests a very proper caution, not to presume too far upon the health of the gaol, barely because the gaol fever is not among the prisoners. For without doubt, if the points of cleanliness and free air have been greatly neglected, the putrid *effluvia* which the prisoners bring with them in their cloaths or otherwise, especially where too many are brought into a crowded court together, may have fatal effects on people who are

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are accustomed to breathe better air ; though the poor wretches, who are in some measure habituated to the fumes of a prison, may not always be sensible of any great inconvenience from them. The persons of chief note who were in the court at this time, and died of the fever, were Sir *Samuel Pennant* lord mayor for that year, Sir *Thomas Abney* one of the justices of the common pleas, *Charles Clarke* esquire one of the barons of the exchequer, and Sir *Daniel Lambert* one of the aldermen of *London*. Of less note, a gentleman of the bar, two or three students, one of the under sheriffs, an officer of lord chief justice *Lee* who attended his lordship in court at that time, several of the jury on the *Middlesex* side, and about forty other persons whom business or curiosity had brought thither. *Fest. 74.*

In conformity with these humane sentiments, the following regulations are established by the 14 G. 3. c. 59. Whereas the malignant fever, commonly called the gaol distemper, is found to be owing to want of cleanliness and fresh air in the several gaols, the fatal consequences whereof might be prevented, if the justices of the peace were duly authorized to provide such accommodations in gaols, as may be necessary to answer this salutary purpose ; it is therefore enacted, that the justices, in their several quarter sessions, shall order the walls and cieling of the several cells and wards, both of the debtors and felons, and also of any other rooms used by the prisoners in their respective gaols where felons are usually confined, to be scraped and whitewashed once in the year at least ; and to be regularly washed and kept clean, and constantly supplied with fresh air by hand ventilators or otherwise ; and shall order two rooms in each gaol, one for the men, and the other for the women, to be set apart for the sick prisoners, directing them to be removed into such rooms as soon as they shall be seized with any disorder, and kept separate from those who shall be in health ; and shall order a warm and cold bath, or commodious bathing tubs, to be provided in each gaol, and direct the prisoners to be washed in such warm or cold baths or bathing tubs, according to the condition in which they shall be at the time, before they are suffered to go out of the gaol upon any occasion whatsoever. And they shall order this act to be printed in large and legible characters upon a board, and hung up in some conspicuous part of the gaol. And they shall also appoint an experienced surgeon or apothecary, at a stated salary, to attend the gaol ; who shall re-

port to the justices, at each quarter sessions, a state of the health of the prisoners under his care. *f. 1.*

And they shall have power, in their said quarter sessions, to order cloaths to be provided for the prisoners, when they see occasion; and to prevent the prisoners from being kept under ground, whenever they can do it conveniently; and to make such other orders, from time to time, for restoring or preserving the health of prisoners, as they shall think necessary; and also to direct the several courts of justice within their respective jurisdictions to be properly ventilated. *f. 2.*

And the expences attending the execution hereof, so far as the same shall respect county gaols and courts of justice belonging to counties, shall be paid out of the county rates; and so far as they respect the gaols and courts of justice of particular cities, franchises, or places, that do not contribute to the county rate, shall be paid out of the public stock of such city, franchise, or place. *f. 3.*

And if the gaoler shall neglect or disobey the orders of the justices, he may be proceeded against in a summary way, by complaint to the judges of assize, or to the justices in their quarter sessions; and if he be found guilty, he shall pay such fine as they shall impose, and be committed in case of non-payment. *id.* [It is not specified to what place, nor for what time.]

VIII. Of clergymen to officiate in gaols.

The justices in sessions may appoint clergymen to officiate in gaols according to the rites of the church of England, and allow to each a salary not exceeding 50*l* a year; to be paid by the treasurer out of the county rate. 13 G. 3. c. 58.

IX. How prisoners shall be delivered.

By the 3 H. 7. c. 3. Those that have the custody of gaols, must certify the names of all prisoners, to the justices of gaol delivery, in order to their trial or discharge; on pain of 5*l*.

And if a gaoler detains a prisoner in gaol after his acquittal, unless it be for his fees (not for meat, drink, or lodging), this is an unlawful imprisonment. 2 Inst. 53.

And

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And a gaoler must not disobey a writ of *habeas corpus*, for want of his fees; but the court will not turn the prisoner over till the gaoler be paid all his fees. 2 *Haw.* 151.

But by the 14 G. 3. c. 20. If the prisoner is acquitted, or discharged upon proclamation for want of prosecution, or hath no bill found against him, he shall pay no fee to the gaoler for his discharge; but such fee as hath been usual, not exceeding 13s 4d, shall, on certificate of a judge or justice before whom such prisoner shall have been discharged, be paid out of the general county rate.

X. Of gaolers permitting escapes.

If the gaoler voluntarily suffer a prisoner to escape, he shall be punished in the same manner as the prisoner ought to have been who escaped; and if he negligently permit him to escape, he shall be punished by fine and imprisonment. And the sheriff shall answer for him. 2 *Haw.* 134, 5, 6.

But the principal gaoler is only finable for the voluntary escape of a felon suffered by his deputy; for no one shall suffer capitally for any crime, but he who is actually guilty of it. 2 *Haw.* 135.

But for a negligent escape suffered by his bailiff, the sheriff is as much liable to answer, as if he had actually suffered it himself; and the court may charge either the sheriff or bailiff for it: And if a deputy gaoler be not sufficient to answer a negligent escape, his principal must answer for him. 2 *Haw.* 135.

XI. Concerning debtors.

Arresting and
carrying to gaol.

1. By the 32 G. 2. c. 28. No sheriff, bailiff, or other officer, shall carry any person by him arrested or being in his custody by virtue of any writ or other process, to any tavern, alehouse, or other publick victualling or drinking house, or to the private house of any such officer or of any tenant or relation of his without his free consent; nor charge him for any liquor, victuals, or other thing whatsoever, but what he shall call for of his own accord; nor cause or procure him to call for any such, but what he shall call for voluntarily; nor demand, directly or indirectly, any other or greater fee than is by law allowed; nor take any gratuity for keeping him out of gaol; nor carry

carry him to gaol within 24 hours from the time of the arrest, unless such person arrested shall refuse to be carried to some safe and convenient dwelling house of his own appointment within some city or market town (if there arrested), otherwise within 3 miles from the place of arrest, so as such dwelling house be not the house of the person arrested, and be within the respective division or liberty.

f. 1.

And no sheriff, bailiff, or other officer, shall take more for one or more nights lodging, or for a day's diet, or other expences of any person under arrest, than shall be allowed by order of sessions: Which sessions shall make order therein, and vary the same from time to time as they shall see occasion; and shall cause a copy of every such order, and of every variation or alteration thereof, signed by the clerk of the peace, to be put and kept up in some conspicuous place in the sessions house or other proper place, that the same may be there seen and examined.

f. 2.

And every sheriff, and other person intrusted with the execution of process, shall deliver a printed copy of the several clauses in this act relating to bailiffs and other persons to be employed under them, to every such bailiff and other person; and shall also make it part of the condition of the bond to be given by such bailiff or other person, that he will shew and deliver a copy of the said clauses to every person he shall arrest and go with to any publick or other house where any liquor shall be sold, and that he will permit every person so arrested or any friend of his, to read over the same clauses before any liquor, meat, or victuals shall be called for or brought to such person: And if any bailiff shall offend in the premises; he shall, besides the breach of the condition of the bond, be deemed guilty of a misdemeanor in the execution of the process, and punishable as such by virtue of this act.

f. 3.

2. And the sheriffs and gaolers shall suffer any prisoner for debt, at his will and pleasure to send for or to have brought unto him at seasonable times in the day, any beer, ale, victuals, or other necessary food, from what place he shall think fit, or can have the same; and also to have and use such bedding, linen, and other necessaries, as he shall have occasion for and think fit, or shall be supplied with, without purloining or detaining the same, or requiring him to pay for the having or using thereof, or putting any manner of restraint or difficulty upon him in relation thereunto.

f. 4.

Gaoler to suffer the prisoner to send for necessaries.

3. The

Justices to establish tables of fees, and rules and orders for the regulation of gaols.

3. The two lords chief justices and lord chief baron, or two of them, together with the mayor and two aldermen of London, or with three aldermen without the mayor, in respect of the prisons within the said city; and the said lords chief justices and chief baron, or two of them, together with three justices of the peace of Middlesex and Surry respectively, for the prisons within the said counties; and elsewhere, the justices in sessions, — shall establish tables of the rates and *fees* to be taken by gaolers within their respective jurisdiction, and vary the same from time to time as they shall see occasion. The same to be signed respectively by the said judges, mayor, aldermen, and justices within London, Middlesex, and Surry; and elsewhere, to be signed by 3 or more justices in sessions, and afterwards reviewed and confirmed or moderated by the judges of assize (or justices of great sessions in Wales and Cheshire) at the next assizes to be held after making or varying the same as aforesaid; the same to be afterwards signed by the said judges of assize and three justices of the peace of such division or place respectively. *f. 5.*

And proper *rules and orders*, for the better government of the respective gaols and prisoners therein, shall be made, and altered from time to time as there shall be occasion, by the courts of Westminster hall for the several prisons belonging to the said courts: And by the said lords chief justices and chief baron or two of them, together with the mayor of London and two aldermen, or with 3 aldermen without the mayor, for the prisons within the said city: And by the said lords chief justices and chief baron or two of them, together with 3 justices of the peace, for the prisons within Middlesex and Surry; and elsewhere, by three or more justices in sessions, for the prisons within their respective districts; the same to be afterwards reviewed, and altered if thought necessary, by the judges of assize at the next assizes after making or altering the same: And after every making or altering as aforesaid, the same shall be signed by the said several persons authorized to make, review, or alter the same. *f. 6.*

And duplicates of every such table of fees and of orders which shall be made for the prisons belonging to the courts of Westminster hall shall be inrolled in such court: And for any other prisons, shall be transmitted to the clerk of the peace, to be inrolled by him, without fee; and every such clerk of the peace shall cause another copy thereof to be hung up in the court where the assizes or quarter sessions

sions shall be held, there to remain and be inspected; and shall cause another copy thereof to be transmitted to the gaoler; and such gaoler shall forthwith cause the same to be hung up in some open place and in a conspicuous manner in his gaol; and to be there kept up, so as that the prisoners may have free resort thereto, at seasonable times in the day, without paying any thing for the same.

And the courts of Westminster hall shall, in every Michaelmas term, inquire whether such tables of fees and such rules or orders are there hung in the several prisons to them belonging, and duly complied with: And the judges of assize shall make like inquiry, and shall supply and redress whatever they shall find neglected or transgressed relating thereunto; and shall expressly give in charge to the grand jury, to make inquiries thereof. *f. 7, 8.*

And no gaoler shall take, directly or indirectly, of any prisoner for debt, damages, costs, or contempt, any other fee for his commitment, or coming into gaol, chamber rent there, release or discharge, than shall be allowed in the said table of fees: And every sheriff, gaoler, or other officer, who shall in any wise offend against this act, shall for every such offence (over and above such other penalties or punishments as he shall be liable to by the laws now in force) forfeit to the party grieved 50*l.* with treble costs. *f. 12.*

4. The courts at Westminster, justices of assize (and great sessions), justices of the peace, and commissioners for charitable uses, shall from time to time inquire concerning gifts and bequests to poor prisoners; who may send for papers and witnesses, and examine persons upon oath, and order and settle the payment thereof in such easy and expeditious way as they shall think proper. *f. 9.*

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gaols.

And a table of such benefactions, after every such settling thereof, shall be transmitted to the clerk of the peace, to be registred by him without fee; and another table to the gaoler, to be hung and kept up by him in some conspicuous place in his gaol, where the prisoners may have easy resort thereto without fee. *f. 10.*

5. On the petition in term time of any person being or having been under arrest, complaining of any exaction or abuse by the gaoler or other officer, unto any of the courts of record at Westminster from whence the process issued; or, in vacation time, to any of the judges of such court, or to the judges of assize or great sessions, or judges of any other court of record from whence such process issued;

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ances.

issued; they shall hear and determine the same in a summary way, and make such order thereupon for redressing the abuses, and for punishing the offender, and for making reparation to the party injured, as they shall think just, together with full costs of the complaint; the same to be enforced by attachment, or in any other manner as other orders of the said courts or judges may be enforced.
f. 11.

How prisoners
 may be discharged
 on delivering
 up their effects.

6. If any person shall be charged in execution, for any sum not exceeding 100*l*, and shall be minded to deliver up to his creditors who shall so charge him in execution, all his estate and effects towards the satisfaction of the debt wherewith he shall so stand charged; it shall be lawful for such prisoner, before the end of the first term which shall be next after his being so charged in execution, to exhibit a petition to any court of law from whence the process issued, or to the court into which he shall be removed by habeas corpus, or shall be charged in custody, and shall remain in the prison thereof; certifying the cause of his imprisonment:

And setting forth therein, not only a just and true account of all the real and personal estate which he or any person in trust for him is intitled to at the time of his petitioning, and of all incumbrances and charges affecting the same; but also a just and true account of all the real and personal estate which he, or any person in trust for him or for his use, was interested in or intitled to at the time of his imprisonment, either in possession, remainder or expectancy, to the best of his belief, and so far as his knowledge extends; and likewise a just and true account of all securities wherein any part of his estate consisteth, and of all deeds, evidences, writings, books, bonds, notes, and papers concerning the same or relating thereto; and the names and places of abode of the witnesses to all securities, bonds, and notes, and where they are to be met with, so far as his knowledge extends:

And before such petition shall be received by any such court, he shall cause to be given or left unto or for all the creditors at whose suit he shall stand charged in execution as aforesaid, their executors or administrators, and at their usual places of abode (or to their attorney or agent last employed in the cause, if such creditors, or their executors or administrators, cannot be met with, and not otherwise) 14 days at least before such petition shall be presented and received, a notice in writing, signed with his name or mark, importing, that he doth intend to petition the court

from

from whence the process issued upon which he stands charged in execution, or into the prison to which he shall have been removed by habeas corpus, or shall stand charged in execution on any judgment recovered on any bill or declaration filed or delivered in any such court; and also setting forth in such notice, a true copy of the account or schedule of his estate which he intends to deliver into court (except the necessary wearing apparel and bedding of him and his family, and the tools or instruments of his trade or calling, not exceeding the value of 10 l in the whole) :

And an affidavit of the due service of such notice shall be delivered with the petition, and openly read in the court :

And if the court shall be satisfied with the regularity of such notice, the petition shall be received; and the court shall thereupon, by order or rule of the said court, cause the prisoner to petitioning to be brought up, and the said creditors or their executors or administrators to be summoned to appear personally or by their attorney in the said court :

And on their appearance, or if they shall not appear, then on affidavit of the due service of the said order on them, or on their attorney if they cannot be met with; such court shall in a summary way, examine into the matter of the petition, and tender to the prisoner the oath following;

I A. B. do swear in the presence of almighty God, that the account by me set forth in my petition presented to this honourable court, doth contain a full and true account of the real and personal estate, debts, credits, and effects whatsoever, which I, or any in trust for me, at the time of my first imprisonment in this action, or at any time since, had, or was in any respect intitled to, in possession, reversion, or remainder (except the wearing apparel and bedding of or for me and my family, and the tools or instruments of my trade or calling, not exceeding 10 l in value in the whole) : and also an account how much of my real and personal estate, debts, credits, or effects, hath since been disposed of, released or discharged, and how, to whom, and on what consideration, and for what purpose, and how much thereof, I or any person or persons in trust for me, have, or at the time of my presenting my said petition to this honourable court, had, or which I am or was, or any person in trust for me, or for my use, is any ways interested in, or intitled to, in possession, reversion, remainder,

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or expectancy; and also a true account of all deeds, writings, books, papers, securities, bonds, and notes, relating thereto, and where the same respectively now are, to the best of my knowledge and belief, and what charges are now affecting the real estate I am now seised of, or intitled to [if such prisoner shall then be seised of any real estate]; and that I have not, at any time before or since my imprisonment, directly or indirectly, sold, leased, assigned, mortgaged, pawned, or otherwise disposed of, or made over in trust for myself, or otherwise, than is mentioned in such account, any part of my messuages, lands, tenements, estates, goods, stock, money, debts, or other real or personal estate, whereby to have or accept any benefit, advantage, or profit, to myself or my family, or with any view, design, or intent, to deceive, injure, or defraud, any of my creditors to whom I am indebted: So help me God.

And thereupon, the court may order the messuages, lands, tenements, goods, and effects contained in the account, or as much of them as shall be sufficient to satisfy the said debts and fees due to the gaoler, to be (by a short indorsement on the petition, and to be signed by the prisoner) assigned and conveyed to the said creditors, their heirs, executors, administrators, and assigns, for the benefit of them who shall have so charged such prisoner in execution (subject nevertheless to all prior incumbrances affecting the same):

And the estate, interest, or property of all messuages, lands, goods, debts, estates, and effects which shall belong to such prisoner, shall by such assignment be vested in the persons to whom the assignment shall be made; and they may take possession, and sue for the recovery thereof, in like manner as assignees of commissioners of bankrupts:

And on such assignment and conveyance being executed by such prisoner, he shall be discharged out of custody by rule or order of such court; which order being produced to, and a copy thereof left with the sheriff or gaoler, he shall forthwith discharge him, without taking any fee, or detaining him in respect of chamber rent, lodging, or otherwise:

And the person to whom the estate shall be assigned, shall with all convenient speed sell and dispose thereof, and divide the net produce amongst the creditors who shall have charged such prisoner in execution before the time of presenting the petition, in proportion to their respective debts.

But if any person at whose suit such prisoner stood charged in execution, shall not be satisfied with such prisoner's oath, and shall either personally, or by his attorney (if he cannot personally attend, and proof shall be made thereof to the satisfaction of such court) desire further time to inform himself of the matters contained therein; such court may remand the prisoner, and direct him, and the person dissatisfied, to appear either in person or by his attorney, on some other day at farthest within the first week of the term next following the time of such examination; but sooner if such court shall think fit.

And all objections which shall be made as to the insufficiency in point of form against the schedule, shall be only made the first time such prisoner shall be brought up.

And if at such second day, the creditor dissatisfied shall not appear, or shall be unable to discover any estate or effects of the prisoner omitted in the account set forth in his petition; in such case, the court shall order the prisoner to be discharged, on his executing such assignment and conveyance as aforesaid; unless such creditor shall insist upon his being detained, and shall agree by writing signed by him (or by his attorney, in case such creditor shall be out of *England*) to pay weekly a sum not exceeding 2 s and as such court shall think fit, to the said prisoner, to be paid weekly every Monday; and in such case, the prisoner shall be remanded: But if any failure shall be made in the payment thereof, such prisoner, upon application in term time to such court, or in vacation time to any judge of such court, may by order of such court or judge be discharged, on his executing such assignment as aforesaid; proof being made on oath, of the non-payment, for any week, of such sum.

And if any prisoner shall refuse to take the said oath, or shall be detected before such court or judge of falsity thereon, or shall refuse to execute such assignment; he shall presently be remanded. *f. 13.*

Provided that where more creditors than one shall desire to have such prisoner detained; every of such creditors shall only respectively pay such sum, not exceeding 6 d a week, as the court shall order. *f. 14.*

But where any prisoner shall be charged in execution in any county gaol, or in any other prison above 20 miles from Westminster hall or from the court out of which the execution issued; then, on the like petition as aforesaid,

to the court from whence such execution issued, or in the prison of which such prisoner is and stands charged in execution; and on affidavit in like manner as aforesaid being made and left with such petition; such court, on being satisfied with the truth of such affidavit, shall make a rule to cause the prisoner to be brought to the next assizes (or great sessions in Wales and Cheshire) to be holden for the place where he shall be imprisoned; and the expence of bringing him not exceeding 1 s a mile, shall be paid to the gaoler out of the prisoner's estate if the same shall be sufficient to pay such expence; and if not, then to be paid by the treasurer of the county or place in which such prisoner shall be imprisoned, as shall be allowed by the judge; and the creditors, or their executors or administrators, shall by order of the court from whence the process issued, be summoned to appear at the said assizes, if they can be met with; if not, then the attorney last employed for such creditors; and a copy of such order shall be served on every such creditor, or his executors or administrators, or left at his dwelling house or usual place of abode, or with his attorney last employed, 14 days at least before such assizes. And upon affidavit of such service thereof being laid before the judge of assize, he shall on being satisfied with the truth of such affidavit, appoint a time for hearing the matter of the petition, on some certain day and time, on the crown side of such court, during such assizes. And on the appearance of the said creditors; or, in default of their appearance, either in person or by attorney, then on proof of their being duly served with the notice, and of a copy of the schedule being comprised in such notice, and of the rule of such court for their appearance being duly served; the judge shall in a summary way examine into the matter of the petition, and administer the oath to the prisoner, and make such order in the premises as to him shall seem meet, and proceed in manner as aforesaid concerning the prisoner's discharge, and give the same judgment, relief, and directions relating therunto, as any court out of which the process shall issue is herein before directed to do: And the order of the said judge shall stand good, and be entered upon record in such assizes; and a copy thereof (signed by the judge) shall be transmitted to the court from whence the execution issued, to be there also entered upon record. *f. 15.*

If so compellable
to do ver up.

7. By the said act of 32 G. 2. c. 28. If any prisoner who shall be charged in execution, for any debt or damage

ges not exceeding 100l besides costs of suit, shall not within three months next after his commitment make satisfaction to his creditors who charged him in execution; any such creditor or creditors may require him, on giving 20 days notice to him in writing that they design to compel him to give in to the court from which the process issued, or into the court in the prison whereof he shall be removed by habeas corpus, or shall remain or be charged in execution, within the first seven days of the term next after the expiration of the said 20 days, in respect to any prisoner charged in any prison belonging to the courts at Westminster; and at the second court which shall be held by any such other court of record after the expiration of the said 20 days, in respect to any prisoner charged in any prison belonging to such other court; and where such prisoner shall be charged in execution in any county gaol or other prison above 20 miles distant from Westminster hall or from the court out of which the process issued, then to give in upon oath at the assizes or great sessions respectively, and on the crown side thereof, which shall be held for such place next after the expiration of such 20 days from the time of giving notice as aforesaid, a true account in writing, to be signed by him, of all his real and personal estate, and of all incumbrances affecting the same, to the best of his knowledge and belief, in order that the estate and effects of such prisoner may be devised out of him, and ordered by the court to be assigned and conveyed for the benefit of such his creditors. And every such creditor, requiring such prisoner to be brought up as aforesaid, shall also give 20 days like notice in writing of his intention to require such prisoner to be brought up, to every other creditor at whose suit such prisoner shall be detained or charged in custody in such gaol, if they can be found; and if not, then to the several attornies last employed: and shall also give a like notice in writing to the sheriff or gaoler of such his intention to have such prisoner brought up, and to require such sheriff or gaoler to bring him up accordingly, 20 days at least before the time appointed for him to be brought up. And thereupon such sheriff or gaoler shall, at the costs of such creditor, cause such prisoner to be brought to such court as by the notice is required, together with a copy of the cause or causes of his detainer: and if such sheriff or gaoler, on such notice given to him as aforesaid, and tender made to him by such creditor of reasonable charges not exceeding 1s a mile, shall neglect

Gaol and Gaoler.

glect or refuse to bring him up as aforesaid; he shall forfeit 20 l to the party grieved, with treble costs. And the prisoner so brought up, shall, on proof of such notices being given as aforesaid, deliver in there in open court, upon oath, a full true and just account, disclosure, and discovery in writing, of the whole of his real and personal estate, and of all books, papers, writings, and securities relating thereto, and also of all incumbrances then affecting the same, and the respective times when made, to the best of his knowledge and belief (except the necessary wearing apparel and bedding of him and his family, and the necessary tools or instruments of his trade or calling, not exceeding the value of 10 l in the whole): which account shall be subscribed by him. And on delivering in of such account, the estate and effects of such prisoner shall be assigned and conveyed by him, by a short indorsement on the back of the said account, to such persons as the court shall direct, in trust and for the benefit of the creditors who shall have required such prisoner to be brought up, and of such other creditors (if any there be) at whose suit such prisoner shall be charged in custody or in execution in any such gaol, and who shall, by any memorandum or writing signed by them before such assignment made, consent to such prisoner's being discharged, and to accept a proportionable dividend of such prisoner's effects; and if there be no other such creditor, or being such, if such creditor shall not agree in writing to discharge such prisoner and to accept such dividend, then in trust for the creditors only who shall require such prisoner to be brought up. And by such assignment and conveyance, all the prisoner's estate and effects shall be vested in the creditors to whom the same shall be assigned in trust as aforesaid. And upon such discovery, assignment, and conveyance being made, the court shall discharge the prisoner in the actions and charges of every such creditor, who required the prisoner to be brought up, or who signed such consent as aforesaid; on paying 2 s 6 d discharge fee, and no more, to the officers of the court. And no stamp shall be necessary on such assignment or on any rule or order for such discharge.—But all the future effects of such prisoner (except the necessary wearing apparel of him and his family, and the necessary tools or instruments of his trade or calling) shall be liable to satisfy his debts, if the same shall not be fully paid from his estate so assigned as aforesaid; and no advantage in any suit shall be taken by him, for that the cause of action did not accrue within

fix years next before the commencement of such suit, unless he was intitled to take such advantage before he stood charged in custody by virtue of the original suit or action.

—And if he shall neglect or refuse to deliver in and subscribe such account as aforesaid, within the time herein before appointed, or within 60 days then next following, without making appear some just excuse to be allowed of by the court; or shall refuse to assign or convey his estate and effects according to the order of such court; he shall, on conviction upon indictment, be transported for 7 years: And if he shall deliver in a false account, or designedly conceal and not insert in the account any books, papers, securities, or writings relating to his estate and effects, with intent to defraud his creditors, and shall be thereof convicted on indictment, he shall suffer as for wilful perjury. *f. 16, 17.*

8. By the said act of 32 G. 2. c. 28. the assignees may compound with any debtors or accountants to such prisoner, and take such reasonable part of any debt due, as can upon such composition be gotten; and also may submit matters to arbitration, relating to the prisoner's estate and effects, which shall be binding to all the parties. *f. 21.*

Assignees may compound.

And where mutual credit hath been given between the prisoner and any other, before the delivery of the schedule; the assignees may state and allow the account between them, and receive the balance. *f. 23.*

9. And it shall be lawful for the respective courts at Westminster from whence the process issued; or where the prisoner shall have been charged in execution by process issued out of any other court, it shall be lawful for the judges of the courts of king's bench, common pleas, and exchequer, or any of them, from time to time, on the petition of any creditor who had charged such prisoner in execution, or of such prisoner, complaining of any insufficiency, fraud, mismanagement, or other misbehaviour of any assignee, to order the parties to attend thereon; and upon hearing, they shall make such order, either for the removal of such assignee and appointing a new one, or for the just management of the effects, as to them shall seem meet. *f. 22.*

Misbehaviour in the assignees.

10. If the effects assigned shall not satisfy the whole debt, Gaoler to have only his dividend, and the gaoler's fees; the gaoler shall receive only a proportionable dividend with the other creditors. *f. 19.*

11. A prisoner discharged shall never after be arrested or liable to action for the same debt, unless convicted of perjury. *f. 20.*

Prisoner discharged shall not be again arrested.

But his effects
shall be liable.

12. But nevertheless, the judgment against him shall continue in force, and execution thereon may be had at any time against his lands and goods, other than his necessary wearing apparel and bedding for himself and family, and the necessary tools of his trade or occupation not exceeding 10*l* value in the whole. *f.* 20.

Persons guilty of
perjury.

13. If any person who shall take any oath as by this act required to be taken, shall upon any indictment for perjury be convicted by confession or verdict; he shall suffer as for wilful perjury; and shall also be liable to be taken on any process de novo, and shall never after have the benefit of this act. *f.* 18.

Persons not re-
lievable having
taken the benefit
of any former
act.

14. No person who shall have taken the benefit of any act for the relief of insolvent debtors, shall have any benefit under this act; nor shall be deemed within the meaning of it, so as to gain any discharge, unless compelled by any creditor to deliver up his estate and effects. *f.* 24.

XII. Concerning the prisons of the king's bench and marshalsea.

The justices in *Easter* sessions shall set down what sums shall be sent out of every county or place corporate, for the relief of the poor prisoners of the *king's bench* and *marshalsea*, so as there be sent out of every county yearly 20*s* at the least to each of the said prisons; to be paid by the high constables out of the general county rate, to two such treasurers or one of them, as by the more part of the justices of the county shall be elected to be treasurers: which treasurers, on the first day of *Trinity* term yearly, shall pay over the same to the lord chief justice of *England*, and knight marshal, or to whom they shall appoint, taking their acquittance for the same, or in default of the chief justice, to the next most antient justice of the *king's bench*, equally to be divided between the prisoners of the *king's bench* and *marshalsea* prisons. 43 *El. c. 2. f.* 12, 13, 14. 11 *G. 2. c. 20. f. 1.* 12 *G. 2. c. 29.*

And if the treasurer shall neglect or refuse, the king's bench may make a rule on him, requiring him to pay the same; and obedience to such rule may be enforced as other rules of the said court, at the costs and charges of the treasurer. 11 *G. 2. c. 20. f. 2. 4.*

And that the treasurer may be the better amenable to the said court, he shall within 30 days after his election

er appointment, under the like penalty, transmit his name and place of abode to the clerk of the crown in the king's bench, to be entred by him ; for which entry no fee shall be paid. *f.* 3

Gauger. See *Excise*.

Gin. See *Excise*.

Glas.

BY the 13 G. 3. c. 38. for the establishing a corporation for carrying on a glas manufactory, for the casting of large plate glas (which act hath continuance for 21 years) many of the penalties and forfeitures are recoverable before one justice of the place where such manufacture shall be carried on : Which not being general, it is thought sufficient in this place to refer those whom it may concern to the act itself.

For the Duties on Glas, see *Excise*.

Good behaviour. See *Surety*.

Grand larceny. See *Larceny*.

Greyhound. See *Game*.

Gunpowder.

1. BY an act made in the 16 C. 1. c. 21. (to wit, in 1640, being the last statute of force in that king's reign) All subjects may make and sell gunpowder, and bring into the kingdom salt petre, brimstone, or any other material for the making of it. Who may make gunpowder.

And by a statute made in the first year of the reign of king James the second (which is also somewhat remarkable), it is enacted, that if any person shall obtain a grant for the sole making or importing of gunpowder, he shall incur a præmunire. *1 J. 2. c. 8. f. 3.*

2. It seemeth, that erecting powder mills, or keeping powder magazines, near a town, is a nuisance by the common law. Erecting powder mills near a town, a nuisance.

mon law; for which an indictment or information will lie. For in the case of *K. and Williams, E. 12 W.* there was an indictment against *Roger Williams*, for keeping 400 barrels of powder near the town of *Bradford*, and he was convicted accordingly. And in *K. and Taylor, T. 15 G. 2.* the court granted an information against the defendant as for a nuisance, on affidavits of his keeping great quantities of gunpowder near *Maldon* in *Surry*, to the indangering the church and houses where he lived. *Str. 1169.* (Or rather, it should have been expressed, to the indangering the lives of his majesty's subjects.)

In what places
gunpowder may
be made.

3. By the 12 G. 3. c. 61. (which reduces into one, and repeals, all former acts relating to the making, keeping, and carrying of gunpowder) No person shall use any mill or other engine for making of gunpowder, in any place except in mills and other places where the manufacture of gunpowder shall be actually carrying on at the time of the commencement of this act, or where it shall afterwards become lawful to carry on such manufacture by licence for that purpose as herein after directed; on pain of forfeiting all gunpowder manufactured otherwise, and 2s for each pound. *f. 1.*

No pebble mill
shall be used in
making.

4. No person shall, for the making of gunpowder, use any mill or engine worked with a pebble, commonly called a *Pebble mill*; on pain of forfeiting all gunpowder manufactured therein, and 2s for each pound. *f. 2.*

What quantity
shall be made at
one time.

5. No person shall, in any mill or engine, make at any one time, under any single pair of mill stones, any quantity of gunpowder, or materials to be made into gunpowder exceeding 40 lb; on pain of forfeiting all above 40 lb, and also 2s for each pound. *f. 3.*

Exception of
Battle powder.

6. Provided, that nothing in this act shall extend to the powder mills now erected in the parishes of *Battle, Crouhurst, Seddelcomb, and Brede*, in the county of *Suffex*, so far as relates to the making such fine fowling gunpowder only, as is known by the name of *Battle powder*. *f. 5.*

What quantity
shall be dried
at one time.

7. No person shall dry at any one time, in any one stove or place used for the drying of gunpowder, any quantity exceeding 40 hundred weight; on pain of forfeiting all above the said weight, and 2s for each pound. *f. 6.*

What quantity
shall be kept in
or near the place
of making.

8. No person shall keep in any corning house, drying house, dusting house, or other place used in making of gunpowder, or in any building adjoining or belonging thereto (except magazines or storehouses constructed with stone or brick, and situate 50 yards at least from the gun-

powder

powder mill) any greater quantity of gunpowder, than shall be necessary for the immediate work then carrying on in such house or other place; on pain of forfeiting all the gunpowder above such necessary quantity, and 2 s for each pound. *f. 7.*

9. Every person and persons, using any mill or other engine for making of gunpowder, shall, besides the magazines and storehouses near their mills, have a good and sufficient magazine remote from their respective mills, for the purpose of receiving and safe keeping all the gunpowder made at such mills, as soon as the same can from time to time be conveniently removed thereto (which last-mentioned magazine shall be built with brick or stone near the river *Thames* and below *Blackwall*, or in some other convenient place to be licensed by the justices as herein after mentioned); on pain that every person making gunpowder, without having such magazine remote from the mill or other place of making, shall forfeit 25 l for every month during which he shall make gunpowder without having such magazine, and 5 l for every day during which he (not being hindered by stress of weather or other just impediment) shall wilfully neglect or delay removing, with due diligence, the gunpowder made at such mill, from thence, or from the magazine or storehouse adjoining thereto, to the magazine so to be situate remote from the mill. *f. 8.*

Magazines to be kept remote from the mill.

10. Every maker of gunpowder, who shall keep any charcoal within 20 yards of any mill or other engine for making gunpowder, or of any drying, corning, or dusting house, or magazine or storehouse thereto belonging, shall forfeit 5 l for every week during which such charcoal shall be so kept. *f. 10.*

Charcoal not to be kept near the mill.

11. No person, being a dealer in gunpowder, shall keep at any one time more than 200 lb of gunpowder, and, not being a dealer, more than 50 lb, in any house, mill, magazine, storehouse, warehouse, shop, cellar, yard, wharf, or other building or place occupied by him, or on any river or other water, (except in carriages loading or unloading, or passing on the land; or in ships, boats, or vessels loading or unloading, or passing on any river or other water, or detained there by the tide or bad weather,) within the following limits; that is to say, Within the cities of London or Westminster or within 3 miles of either of them; or within any other city, borough, or market town, or one mile thereof; or within two miles of any of the king's palaces, or any of the king's magazines;

Within what limits gunpowder may be kept.

or

or half a mile of any parish church; or in any other part of Great Britain, except in mills or other places which at the commencement of this act shall be used for the making of gunpowder, and in the places where it shall be lawful to make gunpowder, or to keep greater or unlimited quantities of gunpowder by force of the provisions herein after contained; on pain of forfeiting all the gunpowder beyond the quantity hereby allowed to be kept, and the barrels in which such gunpowder shall be, and also 2 s for every pound beyond such allowed quantity. *f. 11.*

Provided, that it shall be lawful for any person to keep, for the use of any mine or colliery, any quantity of gunpowder, not exceeding 300 pounds weight, in any magazine or warehouse, so as the same be within 200 yards of such mine or colliery, and not within any of the limits herein before particularly described. *f. 12.*

The sessions to
license the erect-
ing of mills or
magazines.

12. And whereas it may be necessary to have some places appointed, in which it may be lawful to erect new mills or other engines for making gunpowder, with proper magazines and offices adjoining thereto, and to have magazines for keeping unlimited quantities of gunpowder in places where there are no mills; it shall therefore be lawful for the justices in sessions, from time to time, to license the erecting or having such mills and offices, or such magazines for keeping unlimited quantities of gunpowder in places, not being within London or Westminster or any other limits herein before particularly described, the person applying having first given 14 days notice in writing of the intention to make such application, as also of the place or places proposed for such purposes respectively, to an overseer of the poor or churchwarden of the parish or place wherein it is proposed to erect such new mill and offices or magazine, or of an adjoining parish if the place be extraparochial; which overseer or churchwarden shall cause such notice to be publicly read on the Sunday next ensuing in the parish church after divine service. *f. 13.*

And if the justices in the said sessions shall refuse to grant such licence, the party aggrieved may apply to the said justices then present for a special state of the case, together with the proofs offered for and against the application, in order that the said case and proceedings may be removed by Certiorari into the court of king's bench; and the justices, in their return to the Certiorari shall state such special case. And if the court of king's bench shall be of opinion, that the justices ought not to have refused such

licence,

licence, they shall order the justices to grant such licence at their next sessions, and shall award costs on the writ of Certiorari as they shall think fit. *f. 14.*

Provided nevertheless, that no person shall be liable to any penalty or prosecution under this act, for keeping unlimited quantities of gunpowder without such licence of the justices, in any magazine remote from any gunpowder mill, and already built and used for that purpose, in any place not being within London or Westminster or the other limits herein before described, until the expiration of six Kalendar months, after an adjudication by the justices that the same is dangerous: And they shall not have power to make such adjudication, except on complaint to them by some householder of the parish or place in which the magazine shall be, and after summons of the owner and examination of witnesses. *f. 15.*

And whereas the makers of gunpowder will be liable to penalties for not having magazines remote from their mills, and in some cases they may not be able to agree for the purchase of ground proper for the same; the justices in sessions, on application by such maker of gunpowder, may appoint proper and convenient pieces of ground, not being in London or Westminster or other the limits aforesaid, and not exceeding one acre in any one place, with the use of convenient roads thereto, on which they may erect magazines, after having agreed with the owner for the purchase of the same: And if such owner shall not agree, or by reason of any impediment cannot agree, the justices shall issue a warrant to the sheriff, to summon a jury to appear before them at a time and place appointed, who shall upon their oaths inquire into the true value of the said pieces of ground, with the use of such convenient roads thereto. And the justices may send for any persons interested, and examine any parties or witnesses upon oath. And the verdict of the jury shall be kept amongst the records of the sessions. And the judgment of the said justices thereon shall be final. And the sum of money so to be adjudged, not exceeding 30 years purchase, shall be paid to the owner of the ground; and upon such payment, or in case of refusal to accept the money, then upon leaving the same with the justices for the benefit of the owner, the inheritance of the ground, and the use of the said roads thereto, shall be vested in the purchaser, his heirs and assigns, for the purpose aforesaid, and not otherwise. *f. 16.*

13. No person shall carry at any one time more than 25 barrels of gunpowder in any waggon, cart, or other carriage What quantities shall be carried at one time.

carriage by land ; or more than 200 barrels in any barge, boat, or other vessel by water (except in vessels with gunpowder imported from or to be exported to any place beyond the sea, or going coastwise) : And the barrels in which it shall be carried shall be close joined and hooped, without any iron about them, and so secured that no part of the gunpowder be scattered in the passage : And each barrel shall contain no more than one hundred pounds of gunpowder : And when conveyed by land, shall be intirely inclosed in a leathern bag, or a bag commonly called a salt petre bag : And every carriage in which gunpowder shall be conveyed by land, shall have a compleat covering of wood, painted cloth, tarpaulin, or wadmill tilts, over all the gunpowder therein contained : And also no gunpowder shall be conveyed in any barge, boat, or other vessel by water (except in vessels for importation, or exportation, or going coastwise, as aforesaid) that hath not a close deck ; and as soon as any gunpowder is put on board such vessel, all such gunpowder shall be covered with raw hides or tarpaulins.—And all gunpowder carried in greater quantity, or in other manner than is herein before prescribed, and the barrels in which such gunpowder shall be, may be seized by any person ; who shall have the same authority to remove such gunpowder and barrels, and for that purpose to use, during the space of 24 hours after seizure, the carriage or vessel in which such gunpowder shall be seized, and the tackling, beasts, and accoutrements belonging thereto, on paying a recompence for the use thereof, as is herein after given to persons searching under a justice's warrant : And such seizure shall be for his own use, on conviction of the offender. *f. 18.*

And when any barge, boat, or vessel, having stale, condemned, or returned gunpowder on board, arrives at the wharf, key, or other place where the same is intended to be landed ; no person shall begin to unload, or shall bring down to such wharf, key, or other place, with intent to load in such vessel, any other gunpowder, until the whole or part of such stale, condemned, or returned gunpowder, be first unloaded and carried away from such wharf, key, or other place of landing : And after such unloading and carrying away of part of such gunpowder, no person shall begin to load, or shall so bring down with intent to load, any greater quantity of other gunpowder than the part unloaded and carried away ; on pain of forfeiting all such gunpowder as shall be so brought down or loaded contrary hereunto. *f. 19.*

Gunpowder.

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14. If any person, having the care or management of any barge, boat, or other vessel (except ships for importation, exportation, or going coastwise, as aforesaid) loaded with gunpowder, or any other person on board the same, shall bring, have, or use any charcoal or other combustible matter, or any fire or lighted candle, or shall smoak, or wittingly permit any person to smoak on board the same; he shall forfeit 5 l. *f. 20.*

Combustibles
not to be kept
on shipboard.

15. If any person having the care of any waggon, cart, or other carriage, used for the conveyance of gunpowder by land, shall, after beginning to load therein any quantity of gunpowder, or beginning to unload the same thereout, stop or stay at any place of loading, or in the loading or unloading suffer any longer time to pass than shall be reasonably necessary for that purpose; or if any person having the care of any barge, boat, or other vessel used for the conveyance of gunpowder by water (except in the case of importation, exportation, or carrying coastwise, as aforesaid) shall, after beginning to load or unload any quantity of gunpowder, stop or stay at any wharf, key, or other place of loading, or in the loading or unloading thereof suffer any longer time to pass than shall be reasonably necessary for that purpose, not exceeding 18 hours, unless hindered by the weather; or if any person shall take in or carry in such carriage or vessel any other lading of any kind; he shall forfeit 10 l. *f. 21.*

Gunpowder in
carrying not to
be delayed.

Provided, that none of the aforesaid provisions concerning the conveying, loading, or unloading, shall extend to any other carriage or vessel, than such as shall carry a quantity of gunpowder exceeding 100 pounds weight. *f. 22.*

16. And for the more easy discovery of offenders, any justice, on demand made, and reasonable cause assigned upon oath, may issue his warrant for searching, in the day time, any house, mill, magazine, storehouse, warehouse, shop, cellar, yard, wharf, or other place, or any carriage, ship, boat, or vessel, in which such gunpowder is suspected to be made, kept, or carried, contrary to this act: And all gunpowder found on such search, and also the barrels, shall be immediately seized by the searcher, who shall with all convenient speed remove the same to such proper place as he shall think fit; and in case of gunpowder seized in any carriage or vessel, may use for the purpose of removal, during the space of 24 hours after seizure, such carriage or vessel, with the tackling, beasts, and accoutrements belonging thereto (paying afterwards

Power of the
justices to search

Regulations on
the river
Thames.

afterwards to the owner a sufficient recompence for the use thereof, to be settled by the justices before whom the cause shall be heard), and may detain such gunpowder and barrels, till it shall be adjudged on a hearing before two justices whether the same shall be forfeited. *f. 23.*

17. For security of ships in the river Thames, no master of any vessel outward bound shall receive on board more than 25lb of gunpowder (except for the king's service) before the arrival of such vessel at or below Blackwall; and the master of every vessel coming into the river Thames shall (except in case of the king's service) put on shore in proper places all the gunpowder on board above 25 pounds, either before the arrival of such vessel at Blackwall, or within 24 hours (if the weather will permit), and shall not afterwards have on board more than 25 pounds (except for the king's service); on pain of forfeiting all the gunpowder found on board above 25 pounds, and the barrels containing the same, and also 2s for every pound above the quantity of 25 pounds. *f. 24.*

And the master, wardens, and assistants of the corporation of Trinity house of Deptford Strond shall appoint searchers, who may, between sun-rising and sun-setting, enter any ship or vessel (except his majesty's ships) in the Thames above Blackwall, and search for unlawful quantities of gunpowder; and shall have the same powers of seizing, removing to proper places, and detaining all such gunpowder and barrels, as are herein before given to persons searching by a justice's warrant. *f. 25.*

Penalties how
to be recovered.

18. All penalties on this act shall be recovered before two justices, on conviction of the offender by confession or oath of one witness, and be distributed half to the king and half to the informer; and where the penalty is pecuniary, it shall be levied by distress, and for want of sufficient distress, the offender shall be committed to the house of correction, to be kept to hard labour, not exceeding 6 months, nor less than three. *f. 26.*

Prosecution to be commenced within 14 days after seizure of the gunpowder, or commission of the offence where there shall not be any seizure. *f. 27.*

General excep-
tions.

19. Provided, that this act shall not extend to any mills or other buildings erected for making gunpowder in any lands belonging to his majesty; or to the keeping of gunpowder at any of his majesty's storehouses or magazines; or to hinder the trial of gunpowder by his majesty's officers; or to the keeping of gunpowder at the magazines now erected at *Barking Creek* in the county

county of *Essex*, *Erith Level* in the county of *Kent*, or the magazines near *Liverpoole*, or the city of *Bristol*; or to the carriage of gunpowder to or from the king's magazines, under a special order from the board of ordinance; or to the carriage of gunpowder with forces on their march, or with the militia during their annual exercise, or which shall be sent for the use of such forces or militia. *f. 29.*

Also, this act shall not extend to hinder any person from carrying an unlimited quantity of gunpowder, in each close decked vessels and in such manner as is herein before directed, from any vessels lying below Blackwall, or from such magazines lying below Blackwall and going to any place beyond sea or coastwise. *f. 30.*

Guns. See **Game.**

Habeas Corpus. See **Bail.**

Hackney coaches and chairs.

For the duty on coaches, see title **Excise.**

THE king may appoint persons not exceeding **Commissioners**, five, to be commissioners for regulating hackney coaches within the bills of mortality. *9 An. c. 23. f. 1.*

2. Which commissioners shall under hand and seal license hackney coaches within the cities of London and Westminster and suburbs thereof, and other places within the bills of mortality, not exceeding 1000; and on every licence shall be reserved 5s a week, to be paid monthly. *An. c. 23. f. 2. 11 G. 3. c. 24, 28.*

And they shall also license hackney chairs within the said liberties, not exceeding 400; reserving a rent of 10s a year, to be paid quarterly. *9 An. c. 23. f. 3. 10 An. f. 158. 12 G. c. 12. f. 15.*

3. Every coach and chair shall have a distinct mark on each side; and if any shall alter such mark, he shall forfeit 5l, half to the informer, and half to the king. *9 An. c. 23. f. 4.*

4. No horse to be used with any hackney coach, shall be under 14 hands high. *9 An. c. 23. f. 4.*

Size of the horses.

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Z

5. No

Hackney coaches and chairs.

Penalty of driving without licence.

5. No person shall drive or let to hire any hackney coach without licence; on pain of 5 l: nor shall carry any person for hire in a hackney chair, without licence; on pain of 40s in like manner. 9 *An. c. 23. f. 4.*

And by the 1 *G. 2. c. 57.* No unlicensed person shall ply with any coach or hearse, or shall let to hire any mourning coach, within the liberties aforesaid, on pain of 5 l as for driving unlicensed. *f. 3.*

And if any person shall drive a mourning coach to a funeral, not having a number on it, or except it be a coach attending the master or some of his family; on information given to the commissioners, they may summon the driver, and unless he prove an order from the master to attend at the funeral, the driver or the undertaker shall forfeit 5 l. *f. 4.*

Limitation of distance.

6. Every licensed coachman, plying for hire, within the cities of *London* and *Westminster* or the suburbs thereof, or elsewhere within the bills of mortality, shall be obliged and compellable, on every day of the week, at seasonable times, to go any where within the distance of ten miles from either of the said cities. 7 *G. 3. c. 44. f. 12. 12 G. 3. c. 49. f. 1.*

But no person, who shall regularly use such hackney coach as a stage coach to and from any of the towns or places in the neighbourhood of *London* or *Westminster*, shall be obliged to carry any fare out of the ordinary course of his stage work or duty; provided that he do by painting, in legible characters, on the door of such coach or on a board to be affixed on such door, plainly denote and distinguish the same to be a stage coach to and from any such town or place. 12 *G. 3. c. 49. f. 2.*

Drivers to have check strings.

7. And the commissioners shall order the several persons who take out licences for hackney coaches, that they provide cheque strings or wire, to be placed in such convenient part of every such coach as to the said commissioners shall seem meet: and every hackney coachman plying for hire without such cheque string or wire shall forfeit 5s, to be recovered as other penalties by any law relating to hackney coaches. 11 *G. 3. c. 28.*

Rates.

8. And the coachman shall not take above the rate of 12 s 6 d a day, 7 *G. 3. c. 44. f. 17.* reckoning 12 hours to the day; and by the hour, not above 18 d for the first hour; and 12 d for every hour after: And no person shall pay from any of the inns of court or thereabouts to any part of *St James's* or the city of *Westminster* (except beyond *Tuttle-street*) above 12 d, and the same prices from the

the same places to the inns of court or thereabouts; and from the inns of court or thereabouts, to the *Royal Exchange* 12 d, and if to the *Tower* or *Bishopgate-street* or *Milegate* or thereabouts 18 d, and so from the said places to the said inns of court as aforesaid: and the like rates from and to any place, at the like distance, within the places before mentioned. 9 *An. c. 23. f. 6.*

And no person shall be obliged to pay above 12 d for a coach for any distance (not above specified) not exceeding one mile and four furlongs; nor above 1 s 6 d for any distance above a mile and four furlongs, and not exceeding two miles. *f. 7.*

And a chairman may take for any distance not exceeding one mile, 12 d; for any distance above one mile and not exceeding one mile and four furlongs, 1 s 6 d; for every further distance not exceeding four furlongs 6 d; and by the hour, 18 d for the first hour, and 6 d for every half hour after. 7 *G. 3. c. 44. f. 13.*

9. And the commissioners may make by-laws, to bind all persons licensed, and the renters of such licences, and the drivers. 9 *An. c. 23. f. 16.* 1 *G. f. 2. c. 57.*

The same to be approved by the lord chancellor, commissioners of the great seal, two chief justices, and chief baron, or three of them. 9 *An. c. 23. f. 17.*

10. And if any hackney coachman shall refuse to go at, or exact more for his hire, than according to the above act, or by-laws; he shall forfeit a sum not exceeding 3 l, or under 10 s. 1 *G. f. 2. c. 57. f. 2.*

11. And if any person who shall drive a coach, or carry a chair for hire, acting under a person licensed, shall be guilty of misbehaviour, by demanding more than his hire, or giving abusive language, or other rude behaviour; he shall, on conviction on oath, forfeit not exceeding 20 s, to the poor; and if he shall not be able, or refuse to pay, he shall be committed to *Bridewell* or some other house of correction, to be kept to hard labour for seven days, and receive the publick correction of the house before he be discharged. 9 *An. c. 23. f. 44.*

And on misbehaviour of a coachman or chairman by abusive language, or otherwise, the commissioners may revoke his licence, or inflict on him a penalty, not exceeding 3 l, to the poor; and on non-payment, he shall be committed to *Bridewell* or some other house of correction, to be kept to hard labour for 30 days. 9 *An. c. 23. f. 49.* 7 *G. 3. c. 44. f. 16.*

And in every case where any person for any offence mentioned in any law relating to the licensing and regulating of hackney coaches and chairs, shall be liable to be committed to prison; it shall be lawful for the commissioners, or any three or more of them, either to commit such offender to prison as by any former act, and for any time not exceeding one month, or to commit such offender to Bridewell or other house of correction, there to be kept to hard labour for any time not exceeding one month, and also to receive the correction of the house. 7 G. 3. c. 44. s. 15.

And in all cases where they may commit offenders to Bridewell or other house of correction as aforesaid, they may commit them immediately upon such offenders being convicted before them. 10 G. 3. c. 44. s. 5.

Persons refusing
to pay.

12. And if any person shall refuse to pay, or shall deface any coach or chair, any justice may grant his warrant to bring him before him; and on proof upon oath may award satisfaction to the party, and on refusal to pay, may bind him over to the next sessions, who may determine the same. 9 An. c. 23. s. 22.

Power of the
justices.

13. The rents and penalties to be levied by distress, by warrant of three commissioners; which distress shall be sold in ten days, returning the overplus, charges of the distress and of the warrant being first deducted (if on seven days notice they pay not the fine without such warrant); and in default of distress, to be imprisoned till paid; and if any rent shall be unpaid for 14 days, the commissioners may withdraw the licence. 9 An. c. 23. s. 12.

And moreover, the breach of the by-laws, and of the rules and orders, may be punished by any justice of the peace, mayor, bailiff, or other magistrate, where the offence shall be committed, in like manner as by the commissioners. 9 An. c. 23. s. 17. 1 G. 3. c. 57. s. 7. 4 G. 3. c. 36. 7 G. 3. c. 44. s. 19. 10 G. 3. c. 44. s. 7.

And every licensed person who shall neglect or refuse (being duly summoned for that purpose) to appear by himself or his renter, shall forfeit 10 s. to be recovered as the other penalties; and if such licensed person shall neglect or refuse to appear, together with his renter, upon the third summons, the complaint may be heard and determined in his absence. 10 G. 3. c. 44. s. 6.

And all penalties levied by any justice, mayor, bailiff, or other magistrate, shall by them be transmitted to the receiver

receiver general of the duties on hackney coaches and chairs, and they shall also transmit a certificate thereof to the commissioners, within ten days after levying such penalty; on pain of 10 l, half to the king, and half to him that shall sue. *f. 8.*

Note; the clause in the act of the 12 G. c. 12, above-mentioned, was only to continue for 18 years; but by the 16 G. 2. c. 26. it was continued to June 24, 1760, &c. and by the 33 G. 2. c. 25, is further continued during such time as any former act relating to the licensing of hackney coaches or chairs, or any part thereof, shall be in force.

Which acts, as to the time of their continuance, seem to stand thus: The 9 An. c. 23, so far as it relates to this subject, was made to continue for 32 years; and the 9 An. c. 19, so far as it relates to this subject, was made to continue for 31 years; the 1 G. 2. c. 57, which explains and amends the 9 An. c. 23, doth consequently attend the fate of the same act of the 9 An. Now the 33 G. 2. c. 7. f. 1, made the said duties perpetual (subject to redemption by parliament), and perpetual in like manner all the clauses in the said acts for the recovery of the said duties: The 16 G. 2. c. 26, (by mistake, as it seemeth) recites the said acts as temporary only, and continues them along with the said act of the 12 G. to June 24, 1760, &c. And the 33 G. 2. c. 25, reciting the said duties as perpetual (subject to redemption by parliament as aforesaid) seemeth to suppose, that nevertheless the clauses in the said acts for the recovery of the said duties are only temporary and near expiring; and therefore enacteth, that the several clauses in the said acts relating to the power of the commissioners and justices for the recovery of the said duties, shall be in force during such time, as any other part of the said acts relating to the licensing of hackney coaches or chairs shall be in force (that is, as it seemeth, until the said duties shall be redeemed by parliament).

Harbour filling up. See Rivers and Navigation.

Hares. See Game.

Harepipes. See Game.

Hawkers and pedlars.

Licence duty.

1. **T**HERE shall be paid by every hawker, pedlar, petty chapman, or any other trading person, going from town to town, or to other mens houses, and travelling either on foot, or with horse, horses, or other wife, within the kingdom of *England* (except as hereafter excepted), carrying to sell, or exposing to sale any goods, wares, or merchandizes, a duty of 4l for each year. And every person so travelling with a horse, ass, mule, or other beast bearing or drawing burden, shall pay 4l for each year he shall so travel with, over and above the said first mentioned duty of 4l. 9 & 10 *W. c.* 27. f. 1.

Trading person going from town to town] T. 31 G. 2. *Rex v. Little*. The conviction, being removed by certiorari, did set forth, that one *Thomas Preston*, gentleman, came before the justice, and informed him, that the defendant *Thomas Little*, in the parish of *St. Mary*, in the city and county of the city of *Litchfield*, was found offering to sale silk handkerchiefs, and trading as an hawker, pedlar, or petty chapman; and that the said *Thomas Little* did not, altho' required so to do, produce any licence as the law in that case directs: That the said *Thomas Little*, being brought before the justice doth confess, that he the said *Thomas Little* did offer to sell silk handkerchiefs to the said *Thomas Preston*, in such manner as is mentioned in the aforesaid information; and that he had no licence for selling thereof: Whereupon the justice doth adjudge that the said *Thomas Little* is an hawker within the true intent and meaning of the statute in that case made, and is guilty of the offence in the said information laid to his charge. — It was moved to quash this conviction upon two exceptions, 1. With respect to the person; that he is not brought within the description of the acts, as going from town to town, and travelling on foot, or with horse, horses, or otherwise: but he is only generally described to be a person that traded as an hawker and pedlar, and offered to sell a parcel of silk handkerchiefs to the informer. 2. With respect to the offence; the evidence is the defendant's own confession; and the confession extends no further than barely to the simple fact of offering to sale silk handkerchiefs in such manner as is charged upon him. — By lord *Mansfield* Ch. J. A single act of selling a parcel of silk handkerchiefs to a particular

particular person, is not a proof that he was such a hawker, pedlar, or petty chapman, as ought to take out a licence, by virtue of the acts of parliament. It is certainly of the essence of the crime of not producing a licence, that he must be such a person as ought to take out a licence. And the confession is only of the fact, that he offered to sell the handkerchiefs to *Thomas Preston*; not that he traded as an hawker. Convictions ought to be taken strictly; and it is reasonable that they should be so, because they must be taken to be true against the defendant. I do not say, that it is necessary to define exactly, what a hawker, pedlar, or petty chapman is. But it is necessary to alledge and shew that he sold the goods, or traded as one.—— Mr. justice *Denison* concurred, for the same reasons; and thought the material averment to be here wanting; it not being averred that he was such a hawker, pedlar, or petty chapman, as ought to take out a licence.—— By Mr. justice *Wilnot* (Mr. justice *Foster* being absent): I am clearly of the same opinion. For certainly a man may sell goods as a hawker, pedlar, or petty chapman, without being such a person as is obliged to take out a licence. And if he is not obliged to take out a licence, most undoubtedly he ought not to be convicted in a penalty for not producing one. Now here, it appears to me, that the justice hath convicted the man of an offence, of which he hath not proved him to be guilty. And by the court unanimously, the conviction was quashed. *Burrow. Mansfield. 609.*

T. 13 G. 3. *Hunter and Coulthard.* *William Hunter*, of *Dumfries* in *Scotland*, kept a shop there, and sold all sorts of linen and woollen drapery goods; and once a year, for several years together, came to *Carlisle*, and brought to a public house there large quantities of the like goods, and published an advertisement through the city that the goods would be there sold; which goods he continued selling by retail for a week or ten days, as customers came in, and then returned to *Dumfries*. Mr. *Coulthard* the mayor convicted him as an hawker and pedlar, for selling the said goods without licence. *Hunter* brought an information against the mayor, setting forth in the usual form, that the mayor wickedly, maliciously, unlawfully, and under colour and in prostitution of his office did convict him the said *Hunter* as aforesaid. On trial of the information at *Carlisle* assizes in 1773, the judge and jury seemed to be of opinion that *Hunter* was not a hawker and pedlar within the act, going from town to town or

to other mens houses within the kingdom of England and consequently ought not to have been convicted, but yet that there was no criminality in the mayor, but only an error in judgment, for which a court will be very tender in punishing a magistrate criminally, but will ordinarily leave the prosecutor to his action at law for damages. But the jury having brought in a sort of contradictory verdict, finding that *Hunter* was not a hawker and pedlar, and that the mayor was not guilty, the judge sent them back to find the mayor peremptorily either guilty or not guilty upon the information. Upon which they found him guilty. But it appearing afterwards that they had cast lots for their verdict, and consequently that it would be set aside upon motion; the prosecutor, to prevent further litigation, accepted a reasonable satisfaction from the mayor; and so the matter rested.

Exposing to sale any goods, wares, or merchandizes] But by the 9 G. 2. c. 35, he shall not, by virtue of such licence, sell or offer to sale any *tea* or *spirituous liquors* (altho' he have a permit with the same); but the person to whom the same shall be offered may seize and carry the same to the next warehouse, and may seize the offender and carry him before a justice, to be by him imprisoned and prosecuted for the penalties incurred for selling or offering the same to sale without licence. *f. 20.*

And by the 7 G. 3. c. 43, if any *foreign cambrick* or *French lawn* shall be found in the possession of any hawker, pedlar, or petty chapman; he shall forfeit the same, and also all the other goods in his pack, and shall also be adjudged to have forfeited his licence: half the said goods to be disposed to the use of the king, and half to the officer who shall sue for the same; and if no officer shall sue within one month, then any other person may sue.

For each year he shall so travel with] The sense is here manifestly imperfect. The intention of the act undoubtedly was to express, that over and above the first duty of 4 l, a further duty of 4 l should be paid for *every horse, ass, mule, or other beast*: Otherwise a man may carry in a waggon as many goods as would furnish a large shop, for the same duty as he may carry one horse load. And so he may, as the act now stands. Thus in the case of *K. and Robotham*, H. 3 G. 3. On a conviction upon this act being removed into the king's bench by certiorari, exception was taken, that the conviction was, for not having

having a licence to produce for *each horse* he travelled with, although it appeared that he had a regular licence to travel with *an horse*; which licence justified his travelling with *one or more*: For the words of the act are, that he shall pay the said additional duty *for each year he shall so travel with*, and not *for each horse* or other beast of burden. And the conviction was quashed. *Burrow, Mansfield, 1472.*

—And the mistake is no other than this: By the 8 & 9 W. c. 25, Every pedlar or other such person travelling as aforesaid was to pay (for that year only) a duty of 41, and a further additional duty of 41 *for each horse, ass, or mule, or other beast bearing or drawing burden, he or she should so travel with.* This statute of the 9 & 10 W. c. 27, re-enacts the same for three years (and the said duties afterwards were made perpetual); only in this latter act, the words in the transcript have been dropped, which are necessary to compleat the sense, and to answer the intention of the legislature; for, evidently, the sentence ought to have run thus, — *the sum of 41 for each year, for each horse, ass, or mule, or other beast bearing or drawing burden, he or she shall so travel with.*

2. And every such person, on receiving his licence, shall pay to whom the commissioners of the treasury, or three of them, shall appoint for licensers, or their deputy, half the duty, and give security by bond, with one or more sureties, to the king, for payment of the other half at the end of six kalendar months, unless he shall chuse to pay down the other half, in which case he shall be allowed after 2 s in the pound for prompt payment. 9 & 10 W.

Payment of the duty.

c. 27. s. 2.

3. And the commissioners for these duties, or two of them, shall (on the receipt and security given as aforesaid) grant licences to be by them subscribed; for which shall be taken only 1 s, unless such person travel with a horse or beast, and in that case shall be paid only 2 s, above the duties. 9 & 10 W. c. 27. s. 4.

Granting the licence.

4. And if any such person be found trading as aforesaid, without, or contrary to such licence; or if on demand made by any justice of the peace, mayor, constable, or other peace officer of any town corporate or borough, where he shall so trade, shall not have his licence ready to be produced; *he shall forfeit 12 l*, half to the informer, and half to the poor of the parish wherein the offender shall be discovered; and for nonpayment thereof, shall suffer as a common vagrant, and be committed to the house

Trading without a licence, or refusing to shew it.

house of correction. 9 & 10 W. c. 27. s. 3. 3 & 4 An. c. 4. s. 4.

He shall forfeit 12 l] M. 5 G. K. and Beck. Although the statute here mentions nothing of *conviction*, yet nevertheless, there ought to be a formal conviction; and a certiorari will lie for the removal of it. Str. 127.

And if any constable or other officer aforesaid, shall refuse or neglect, upon due notice, or his own view, to be aiding in the execution hereof, being thereunto required, and be thereof convicted on oath of one witness before one justice where the offence shall be committed; he shall forfeit 40s, by distress and sale by warrant of such justice, half to the poor, and half to the prosecutor. 9 & 10 W. c. 27. s. 7.

And any person may seize and detain any such hawker, pedlar, petty chapman, or other trading person, till he produce his licence if he have any, or if he be found trading without a licence, for such reasonable time as he may give notice to the constable, churchwarden, overseer, or some other parish officer, who shall carry such person so seized before a justice; who shall, either on confession, or proof by witness upon oath, convict the offender, and by his warrant cause the sum of 12 l to be forthwith levied by distress and sale of the offender's goods, wares, or merchandizes. 9 & 10 W. c. 27. s. 8.

Lending licences.

5. If any person shall lend or let out to hire his licence, he and also the person trading under colour thereof, shall forfeit each 40 l, half to the king, and half to him that shall sue in any court of record. 3 & 4 An. c. 4. s. 4.

Counterfeiting licences.

6. If any person shall forge or counterfeit, or travel with a forged or counterfeited licence; he shall forfeit 50 l, half to the king and half to him that shall sue in the courts at Westminster, and shall also be liable to be punished for forgery. 9 & 10 W. c. 27. s. 5.

Exceptions.

7. But nothing herein shall prohibit any person from selling acts of parliament, forms of prayer, proclamations, gazettes, licensed almanacks, or other printed papers licensed by authority; or any fish, fruits, or victuals; nor to hinder any person who is the real worker or maker of any goods or wares, or his children, apprentices, servants, or agents, from carrying abroad, exposing to sale, or selling any of the said goods and wares of his own making, in any publick fair, market, or elsewhere; nor any tinker, cooper, glazier, plumber, harness mender, or other person usually trading in mending kettles, tubs, household goods,

or

or harness, from going about and carrying with him proper materials for mending the same. 9 & 10 W. c. 27. f. 9.

Provided also, that persons trading in the woollen and linen manufactures of this kingdom, and selling the same by wholesale, shall not be deemed hawkers, pedlars, or petty chapmen: but that such persons, and those that shall be immediately employed under them to sell by wholesale only, may carry abroad, expose, and sell the said manufactures. 3 & 4. An. c. 4. f. 14.

Manufactures of this kingdom] E. 2 G. 3. Maxwell and Mayer. The plaintiff Maxwell was a native of Scotland, and carried linen goods of the manufacture of Scotland from town to town in England, and exposed them to sale in a room in each town, by wholesale only. The question was, Whether the plaintiff was intitled to the benefit of exemption by this clause, which exempts only the manufactures of this kingdom; which, being before the union, could only mean the manufactures of the kingdom of England. But the court were of opinion, that the manufacture of Scotland is the manufacture of this kingdom. Burr. Manuf. 1314. [Note, By the articles of union, 5 An. c. 8. Art. 18. The laws concerning the regulation of trade shall be the same throughout the whole united kingdom.]

Also no maker or wholesale trader in *English* bone lace, shall be deemed a hawker, pedlar, or petty chapman. 4 G. c. 6.

Also nothing herein shall extend to hinder any person from selling any goods in any publick fair or market. 9 & 10 W. c. 27. f. 12.

And nothing herein shall give any power for the licensing of such persons to sell any goods in cities, boroughs, towns corporate, or market towns, otherwise than they might have done before. 9 & 10 W. c. 27. f. 15.

8. Persons sued for any thing done herein, may plead Treble costs, the general issue, and have treble costs. 9 & 10 W. c. 27.

Hawks and hawking. See Game.

Hay.

THE 2 W. sess. 2. c. 8. and 8 & 9 W. c. 17. and 31 G. 2. c. 40. do contain regulations concerning the selling of hay, straw, and cattle within the bills of mortality,

mortality, which are not general enough to be here inserted at large.

Hedge breaking. See **Wood.**

Hemp.

IT shall not be lawful to any person to water any hemp or flax, in any river, running water, stream, brook, or other common pond, where beasts used to be watered; on pain that every person offending shall forfeit 20 s, half to the king, and half to the party grieved, or any other who shall sue in any court of record, leet, or law day. 33 H. 8. c. 17.

Herring fishery.

IF any person shall damnify or destroy, without consent of the society of the free *British* fishery, any of the nets, sails, cordage, stores, or other materials belonging to the said society; he shall, on conviction on the oath of two witnesses before one justice, forfeit to the society treble value, by distress; and for want of sufficient distress, to be committed to the house of correction to hard labour for any time not exceeding three months, or till satisfaction be made. Prosecution to be in six kalendar months. 28 G. 2. c. 14. s. 9.

Hides and skins. See **Leather.**

High constable. See **Constable.**

High treason. See **Treason.**

Highways in general.

NOTE; Bridges repaired by the parish or township, and which consequently come under the cognizance of the surveyor of the highways are comprehended under this title: County bridges are treated of under title **Bridges.**

For

For the ordering of streets in cities and market towns,
see title *Scavengers*.

I. Concerning the highways in general.

II. Concerning turnpike roads in particular.

I. Concerning the highways in general.

I. *What is a highway.*

II. *Of the special sessions to be held for the highways.*

III. *Appointment of surveyors.*

IV. *Who are liable to repair, and in what proportion.*

V. *Composition instead of labour.*

VI. *Working.*

VII. *Materials how to be procured.*

VIII. *Removing obstructions and annoyances.*

IX. *Direction posts, blocks, mile stones, water marks, and battlements of bridges.*

X. *Breadth of wheels, and number of horses.*

XI. *Breadth, widening, changing, and diverting of highways.*

XII. *Assessments how to be made.*

XIII. *Penalty of hindring the execution.*

XIV. *Penalty of the surveyor for neglect of duty.*

XV. *Surveyor's account.*

XVI. *Presentment or indictment of highways in general.*

XVII. *Presentment by a justice.*

XVIII. *Levyng of assessments, fines, and forfeitures.*

XIX. *Appeal.*

XX. *Limitation of actions.*

I. *What*

I. What is a highway.

Three kinds of highways.

Difference between a highway and a private way.

1. There are three kinds of ways; (1.) a foot way, (2.) A foot and horse way, which is also a pack or drift way. (3.) A foot, horse, and cart way. 1 *Inst.* 56.

2. It seemeth that any one of the said ways, which is common to all the king's people, whether it leads directly to a market town, or only from town to town, and does not terminate there, but is also a thoroughfare to other towns, may properly be called a highway. 1 *Haw.* 201.

For there were highways before there were market towns. And if it were essential to the constituting of a highway, that it should expressly lead from market town to market town; then it would follow, that the lord of a market, by forfeiting or surrendering his charter, might cause that to cease to be a highway, which was a highway before; or the king, by granting a market in any place where there was no market before, might thereby consequentially change the way to it from a private way into a highway.

And therefore, the distinction which is taken in some books, concerning this matter, seems to be very reasonable; that every way from town to town may be called a highway, because it is common to all the king's subjects; and consequently that a nuisance therein is a common nuisance, and punishable by indictment; but that a way to a parish church, or to the common fields of a town, or to a private house, or perhaps to a village which terminates there, and is for the benefit of the particular inhabitants of such parish, house, or village only, may be called a private way, but not a highway, because it belongeth not to all the king's subjects, but only to some particular persons, each of which, as it seems, may have an action on the case for a nuisance therein. 1 *Haw.* 201.

So if I have a private way without a gate, and a gate is hung up; an action lies upon the case, for I have not my way as I had before. *Litt. R.* 267.

So if one grants me a way, and afterwards digs trenches in it to my hindrance; I may fill them up again. *Goldb.* 53.

But if a way which a man has, becomes not passable, or becomes very bad, by the owner of the land tearing it up with his carts, and so the same be filled with water; yet he who has the way cannot dig the ground to let out the water,

water, for he has no interest in the soil. *Godb. 52.* But in such case, he may bring his action against the owner of the land for spoiling the way, or perhaps he may go out of the way, upon the land of the wrong doer, as near to the bad way as he can.

But where a private way is spoiled by those who have a right to pass thereon, and not thro' the default of the owner of the land; it seemeth that they who have the use and benefit of the way ought to repair it, and not the owner of the soil, unless he is bound thereto by custom or special agreement.

3. It hath been holden, that if there be an highway in an open field, and the people have used time out of mind, when the ways are bad, to go by outlets on the land adjoining, such outlets are parcel of the way; for the king's subjects ought to have a good passage, and the good passage is the way and not only the beaten track; from whence it followeth, that if such outlets be sown with corn, and the beaten track be soundrous, the king's subjects may justify going upon the corn. *1 How. 201.*

How far outlets are part of the highway.

4. In books of the best authority, a river common to all men is called an highway. *1 How. 201.*

How far a river may be an highway.

5. The freehold of the highway is in him that hath the freehold of the soil; but the free passage is for all the king's liege people. *2 Inst. 705.*

To whom the freehold of an highway be-
longeth.

H. 8. G. 2. Sir John Lade against Shepherd. Upon trial of an action of trespass, a case was made; that the place where the supposed trespass was committed, was formerly the property of the plaintiff, who some years since built a street upon it, which has ever since been used as a highway; that the defendant had lands contiguous, parted only by a ditch, and that he laid a bridge over the ditch, the end whereof rested on the highway. And it was insisted for the defendant, that by the plaintiff's making it a street, it was a dedication of it to the publick; and therefore however he might be liable to an indictment for a nuisance, yet the plaintiff could not sue him as for a trespass on his private property. But by the court; it is certainly a dedication to the publick, so far as the publick has occasion for it, which is only for a right of passage: But it never was understood to be a transfer of the absolute property in the soil. So the plaintiff had judgment. *Str. 1004.*

II. Of the special sessions to be held for the highways.

The justices shall hold a special sessions for the highways, in the week next after the Michaelmas general quarter sessions yearly. 13 G. 3. c. 78. f. 1.

And any two justices, within their respective limits, may, whenever they shall judge proper, hold a special sessions, and adjourn the same as they shall think fit, causing notice to be given of the time and place of holding such special sessions, and of the adjournments thereof, to the several justices acting and residing within such limits, by the high constable or other proper officer. f. 61.

III. Appointment of surveyors.

Notice of the
time and place
of appointment.

I. The justices shall hold such Michaelmas special sessions as aforesaid, at such convenient place within their respective limits, as they in their discretion shall judge proper :

And shall give notice (A) of the time and place to the constables of the respective parishes, townships, or places, at least ten days before the holding of the said sessions.

13 G. 3. c. 78. f. 1.

Lists to be made.

2. On Sep. 22. yearly, unless that day be Sunday, and then on the day following, the constables, churchwardens, surveyors of the highways, and householders assessed to any parochial or public rate, shall assemble at the church or chapel, or if there be no church or chapel, then at the usual place of public meetings, at the hour of eleven in the forenoon : And the major part of them so assembled shall make a list of the names of at least ten persons living within such district, each of whom hath an estate in lands, tenements, or hereditaments, lying within such district, in his own right or in the right of his wife, of the value of 10 l by the year,—or a personal estate of the value of 100 l,—or occupier of a tenement of the yearly value of 30 l. And if there shall not be ten persons so qualified, they shall insert in such list the names of so many as are so qualified, together with the names of so many of the most sufficient and able inhabitants not so qualified as shall make up the number ten, if so many can be found ; if not, so many as shall be there resident—to serve the office of surveyor of the highways. 13 G. 3. c. 78. f. 1.

3. And the constable shall, within 3 days after such meeting, transmit a duplicate (B) of such list to one of the justices living near to such parish or place. 13 G. 3. Duplicate to be transmitted to a justice.

4. And shall also, within 3 days after making the said list, give personal notice to, or cause notice in writing (C) to be left at the place of abode of the several persons contained in such list, informing them of their being so named; to the intent that they may severally appear before the justices at the said special sessions, to accept such office if they shall be appointed thereto, or to shew cause, if they have any, against their being so appointed. 13 G. 3. c. 78. s. 1. Notice to the persons in the list.

5. And shall also return and deliver the original list (B) to the justices at their said special sessions to be holden in the week next after the Michaelmas general quarter sessions. 13 G. 3. c. 78. s. 1. List returned to the special sessions.

6. And the justices then and there, from the said lists, according to their discretion, and the largeness of the parish, township, or place, shall, by warrant under their hands and seals, appoint (D) one, two, or more of such persons as aforesaid, if he or they shall in the opinion of such justices be qualified for the office; if not, one, two, or more of the other substantial inhabitants, or occupiers of lands, tenements, woods, tithes, or other hereditaments, within such parish, township, or place, living within 3 miles thereof and within the same county, fit and proper to serve the office, if any such can be found. 13 G. 3. c. 78. s. 1. Appointment and charge.

Which appointment shall by the constable be notified to every person so appointed, within 3 days after such appointment, by serving him with the said warrant, or by leaving the same or a true copy thereof at his house or usual place of abode. *Id.*

And every person so appointed, if he accepts the said office, shall be surveyor of the highways for the year ensuing, and shall take upon him and duly execute the said office. *Id.*

Provided, that no person who hath been appointed and served the office for one year, shall be liable to be appointed again for the same parish or place within 3 years from the time of such first appointment and service, unless he shall consent thereto. *Id.*

And the said justices shall then and there give such of the said surveyors as shall personally appear before them a charge, for the better performance of their duty. *Id.*

Penalty on refusal to serve, and others appointed with salaries.

7. If any of the persons so appointed, whose name were contained in the list, and who were served with the said notice, shall refuse or neglect to appear at the said special sessions and accept the said office if appointed thereto in manner aforesaid; or shall not, within 6 days after being served with such warrant or appointment, signify his acceptance thereof, either in person or by writing, to one of the said justices;—he shall forfeit 5*l*. And if any person so appointed, whose name was not contained in the list, shall refuse or neglect to accept the said office; or shall not, within 6 days after being served with the appointment, shew to one of the justices signing such appointment sufficient cause why he should not serve such office;—he shall forfeit 50*s*. *Id*.

But if no such list shall be made and returned; or the justices shall make an appointment, and the person appointed shall refuse to serve; the said justices or any two of them shall, at the said special sessions, or at some subsequent sessions to be holden within one month after, nominate and appoint some other person whom they shall judge proper, and appoint him a salary out of the said forfeitures and all other forfeitures, fines, penalties, assessments, and compositions within such district as they shall think fit, not exceeding one eighth part of what shall have been raised by an assessment of 6*d* in the pound for the use of the highways in such district, where any such assessment hath been raised; and observing the same restriction as near as they can, from the best information they shall be able to get of the probable amount of such assessment, where none hath been already made. And the said justices may, if they think fit, require the constables and surveyor, or any of them, to return to the said justices, at such time and place as they shall appoint, an account in writing of such sum which such assessment of 6*d* in the pound hath raised or will in his opinion raise within such parish or place. *Id*.

And if the constables, churchwardens, surveyors, and such householders as aforesaid shall neglect or refuse to make such list;—or if the constable shall not return such list when made, and such duplicate thereof as aforesaid;—and give such notice or notices;—and serve such warrant as in this act is directed;—or if such constable or surveyor shall neglect to return such account of the amount of such assessment as aforesaid, when required;—he shall forfeit 40*s*. *Id*. *f. 1.*

Provided

Provided, that in cities, boroughs, and towns corporate, the justices shall not allow any salary, other than such as shall be agreed on by two parts out of three of the persons assembled in the respective parish, township, or place, within such city, borough, or town corporate. *Id.* f. 53,

And in all cases where the justices, upon neglect or refusal of the person so appointed surveyor to accept the said office shall appoint any other with a salary; they shall appoint one substantial inhabitant of such parish, township, or place, for *assistant* (E) to such surveyor, until the next annual appointment of surveyors: And if the person so appointed assistant shall, on notice of such appointment, refuse to accept the office; he shall forfeit 50 s. And in that case, they shall appoint any other substantial inhabitant for assistant to such surveyor as aforesaid: And if such second appointed assistant shall refuse to accept that office; he shall in like manner forfeit 50 s. And in such case, they may appoint a third person in like manner to be assistant to such surveyor; who shall be included to these last mentioned forfeitures, and also to such further allowance by way of salary as the said justices shall think proper; to be paid as the surveyor's salary is hereby directed to be paid. Provided, that no person so appointed assistant for one year shall be liable to be appointed assistant again for the same parish, township, or place, within 3 years next following such appointment, without his consent. f. 2.

And the surveyor of any parish, township, or place, who shall not reside therein, but shall be appointed with such salary as aforesaid, shall (if required) give bond, upon paper without stamp, (for which the justices clerks shall give 6d and no more,) to account for the money that shall come to his hands as surveyor. f. 3, 48.

The said assistant shall on request assist the surveyor in calling in and attending the performance of the statute duty; in collecting the compositions, fines, and forfeitures; in collecting the assessments; in making out and serving notices; and in such other matters as shall be reasonably required of him by the surveyor in the execution of his office: And shall account to the surveyor for the money that shall come to his hands, on pain of forfeiting double. And if he shall make default in the performance of any of the duty required of him; he shall forfeit not exceeding 5 l, nor less than 40 s. f. 4.

Abstract of the
act to be deliver-
ed to the survey-
ors.

8. The justices shall at every special sessions to be held in the week next after the Michaelmas quarter sessions cause to be delivered a printed abstract of the most material parts of this act, to every surveyor to be then appointed by them, as the charge hereby directed to be given. 13 G. 3. c. 78. f. 70.

Fee for the ap-
pointment and
charge.

9. And the surveyors shall pay to the justices' clerk for the appointment and charge the sum of one shilling. 13 G. 3. c. 78. f. 48, 70.

Appointment of
special surveyors.

10. If two parts out of three of those so to be assembled for the nomination of surveyors, shall agree in the choice of any particular person of skill and experience to serve the office of surveyor, and in settling a certain salary for his trouble therein, and shall return the name of such person (B) together with the list, to the justices at the said sessions to be holden in the week next after the Michaelmas quarter sessions; the said justices may, if they think proper, appoint such person to be surveyor for such parish, township, or place, and allow him the salary mentioned in such agreement; which shall be raised and paid in the same manner, as the salary herein before mentioned is directed to be raised and paid. 13 G. 3. c. 78. f. 5.

Surveyor dying.

11. If a surveyor shall die, or become incapable to execute his office, before the next special sessions for appointing surveyors; two justices, at a special sessions may appoint another whom they shall think proper, until the next special sessions for appointing surveyors as aforesaid. And if such deceased surveyor had a salary they may allow the same salary to his successor, in proportion to the time he shall serve the said office. 13 G. 3. c. 78. f. 5.

IV. Who are liable to repair, and in what proportion.

Parish in general
to repair.

1. It seems to be agreed, that of common right (that is by the common law) the general charge of repairing highways lies on the occupiers of the lands in the parish wherein they are: But there is no doubt, but particular persons may be burdened with the general charge of repairing a highway, in two cases; namely, in respect of an inclosure, or by prescription.

Repairing in re-
spect of an inclo-
sure.

2. For, a man may be bound to the repair of a highway, in respect of an inclosure of the land wherein it lies, as where the owner of lands not inclosed, next adjoining to the highway, incloseth his lands on both sides thereof.

in which case, he is bound to make a perfect good way, and shall not be excused for making it as good as it was at the time of the inclosure, if it were then any way defective; because before the inclosure, the people used, when the way was bad, to go for their better passage, over the fields adjoining, out of the common track, which liberty is taken away by the inclosure. 1 *Haw.* 202.

And if the way is not sufficient, any passenger may break down the inclosure, and go over the land, and justify it, till a sufficient way is made. 3 *Salk.* 182.

Also it hath been holden, if one inclose land on one side, which hath been antiently inclosed of the other side, he ought to repair all the way; but if there be not such an antient inclosure of the other side, he ought to repair but half that way. 1 *Haw.* 202.

Therefore if there be an old hedge time out of mind on one side of the way, and a person having land on the other side makes a new hedge, such person shall be charged with the whole repair. 1 *Sid.* 464.

But if one person makes an hedge on one side of the way, and another person makes an hedge on the other side of the way, they shall be chargeable to the repair thereof by moieties. *id.*

But it is said, that wherever one is bound to repair a highway, or part thereof, in respect of an inclosure, and says it open again as it was before, he shall be freed from the charge of such repair. 1 *Haw.* 202.

3. A particular person may be bound to repair a highway, in respect of a prescription; and it is said, that a corporation aggregate may be compelled to do it, by force of a general prescription, that it ought and hath used to do so, without shewing that it used to do so in respect of the tenure of certain lands, or for any other consideration; because such a corporation in judgment of law never dies, and therefore if it were ever bound to such a duty, it must needs continue to be always so; neither is it any plea, that such corporation hath always done it out of charity, for what it hath always done, it shall be presumed to have been always bound to do: But it is said, that a person cannot be charged with such a duty, by a general prescription from what his ancestors have done, unless it be for some special reason, as the having land descended from such ancestors, which are holden by such like service. 1 *Haw.* 202.

Yet it seems, that an indictment charging a tenant in fee simple, with having used of right to repair such a way

Repairing by prescription.

by reason of the tenure of his land, is certain enough without adding, that his ancestors or those whose estate he hath, have always so done; for that is implied.

Haw. 203.

But the indictment must set forth, where those lands lie
2 *H. H.* 181.

Under which head of prescription, may be considered the case where, not the whole parish, but particular townships or other divisions within the parish, have for time immemorial repaired particular roads within that parish. Which prescription, being ancient, and without interruption, is presumed to have had its origin by licence on an inquisition of *ad quod damnum*, or other legal commencement. And it would be very prejudicial in large parishes if every inhabitant were liable to repair throughout the whole parish, when the time occupied in going and returning might exceed the time appointed by the law for labour.

But a private agreement amongst the inhabitants, not being ancient, nor confirmed on an inquisition of *ad quod damnum*, that some of the inhabitants shall repair one part of the highway, and some of them another part, is no good: It may be binding amongst the parties thereunto so as on a breach thereof one party may have an action upon the case against the other; but with respect to the publick, they continue equally liable as before; for such private agreement cannot alter the law.

Repairs by private persons how so be enforced.

4. The surveyor shall from time to time give information upon oath to the justices or two of them, of all such highways, and of all bridges, causeways, and pavements upon such highways as are out of repair, and ought to be repaired by any person or persons, bodies politick or corporate, by reason of any grant, tenure, limitation or appointment of any charitable gift, or otherwise howsoever; and the said justices shall limit a time for repairing the same; of which, notice shall be given by the surveyor to the occupier or occupiers of the lands or tenements liable to such repairs, or to such other person or persons, bodies politick or corporate, as are chargeable with the same: And if such repairs shall not be effectually made within the time so limited; the said justices shall present such highways, bridges, causeways, or pavements, so out of repair, together with the person or persons, bodies politick or corporate, liable to repair the same, at the next general quarter sessions for the place where such highway shall lie: And the justices there,

if they see cause, may direct the prosecution to be carried on at the general expence of such county, city, precinct, or liberty, and to be paid out of the general rates within such jurisdiction. 13 G. 3. c. 78. s. 23.

And where any lands have been or shall be given for the maintenance of causeways, pavements, highways, and bridges; the persons enfeoffed or trusted therewith shall let them to farm at the most improved yearly value, without fine. And the justices in their open sessions shall inquire, by such ways and means as they shall think fitting, into the value of such lands; and order the improvement and employment of the rents and profits thereof, according to the direction of the donor, if they find that the persons so intrusted have been negligent or faulty in the performance of their trust. Except such lands as have been given for the uses aforesaid to any college or hall in either of the universities of this kingdom, which have visitors of their own. s. 51.

5. The surveyor, together with the inhabitants and occupiers of lands, tenements, woods, tithes, and hereditaments, shall, at proper seasons in every year, use their endeavours for the repair of the highways, and shall be chargeable thereto as followeth: That is to say,

Proportion of labour.

Every person keeping a waggon, cart, wain, plough, or tumbrel, and *three* or more horses or beasts of draught used to draw the same, shall be deemed to keep a *team*, draught, or plough, and be liable to perform statute duty with the same, in the parish, township, or place where he resides, and shall six days in every year (if so many days shall be found necessary) to be computed from Michaelmas to Michaelmas, send on every day, and at every place, to be appointed by the surveyor, for amendment of the highways in such parish, township, or place, *one* wain, cart, or carriage furnished after the custom of the country with oxen, horses, or other cattle, and all other necessities fit to carry things for that purpose, and also *two able men* with the same: Which duty so performed shall excuse every such person from his duty in such parish, township, or place, in respect of all lands, tenements, woods, tithes, or hereditaments, not exceeding the annual value of 50 l; which he shall occupy therein. 13 G. 3. c. 78. s. 34.

Every person keeping such team, draught, or plough, and occupying in the *same* parish, township, or place, lands, tenements, woods, tithes, or hereditaments of the yearly value of 50 l, *over and beyond* the said yearly value

of 50 l in respect of such team duty shall be performed ; — and every such person occupying lands, tenements, woods, tithes, or hereditaments, of the yearly value of 50 l, in any *other* parish, township, or place besides that wherein he resides ; — and every other person, *not* keeping a team, draught, or plough, but occupying lands, tenements, woods, tithes, or hereditaments, of the yearly value of 50 l, in any parish, township, or place ; — shall find and send one wain, cart, or carriage, furnished with not less than *three horses*, or 4 oxen and one horse, or 2 oxen and 2 horses, and *two able men* to each wain, cart, or carriage : And in like manner for *every* 50 l a year respectively, which every such person shall further occupy in any such parish, township, or place respectively ; such wains, carts, or carriages to be employed by the surveyor in repairing the highways within the parish, township, or place where such estate lies. *Id.*

Every person who shall *not* keep a team, draught, or plough, but shall occupy such estate *under* the yearly value of 50 l, in the parish, township, or place where he resides, or in any other parish, township, or place ; — and every person *keeping* a team, draught, or plough, and occupying such estate under the yearly value of 50 l, in any *other* parish, township, or place than that wherein he resides ; — shall respectively contribute to the repair of the highways, and pay to the surveyor, in lieu of such duty, the sums following ; *viz.* For every 20 s of the annual value of such lands, tenements, woods, tithes, or hereditaments the sum of one penny for every day's statute duty : and in like manner shall pay the sum of one penny for every 20 s of the annual value of such estate which he shall occupy in any such parish, township, or place respectively, above the annual value of 50 l and less than 100 l ; and so for every 20 s that each progressive and intermediate annual value of 20 s which he shall so occupy, shall fall short of the further increase of 50 l, in every parish, township, or place where such lands, tenements, woods, tithes, and hereditaments shall respectively lie, for every day's statute duty so to be required as aforesaid : which said several sums shall be considered as compositions, and shall be paid to the surveyor of the parish, township, or place in which they are charged, for the use of the highways therein, at the time such compositions are to be paid under the authority of this act, or within ten days after ; or, in default of such payments, such money shall

be

be levied by distress, in like manner as the forfeitures for neglect of statute duty. *f. 34.*

Provided, that no person keeping such team, draught, or plough, and performing duty with the same as aforesaid, in the parish, township, or place where he resides, and not occupying lands, tenements, woods, tithes, or hereditaments within the same, of the yearly value of 30 l, shall be obliged to send more than *one* labourer with such team, draught, or plough. *f. 34.*

Every person who shall not keep a team, draught, or plough, but shall keep one or more *cart or carts*, and one or two horses or beasts of draught only, used to draw in each of such carts upon the highways, shall be obliged to perform his statute duty for the like number of days, with such cart or carts, and horse or horses, or beasts of draught, and *one labourer* to attend each cart; or to pay for the lands, tenements, woods, tithes, and hereditaments, which he shall occupy, according to the rate aforesaid, at the option of the surveyor. *f. 35.*

Every person who shall keep a coach, post chaise, chair, or other wheel carriage, and not keep a team, draught, or plough, nor occupy 50 l a year in the parish, township, or place where he resides, shall pay to the surveyor 1 s in respect of every such days statute duty, for every horse which he shall draw in any such carriage; or shall pay according to the value of the lands, tenements, or hereditaments which he shall occupy, at the option of the surveyor. *f. 35.*

Every *man* inhabiting in any parish, township, or place, and being of the age of 18 and under the age of 60 years, not chargeable in any of the respects aforesaid for 4 l a year or upwards, and not being *bona fide* an apprentice or menial servant, nor having performed the statute duty or paid composition for the same in any other parish, township, or place, for that year, shall by himself or one sufficient labourer work upon every of the said days, as he shall be directed by the surveyor. *f. 35.*

And if the teams, draughts, or ploughs, or any of them, shall not be thought needful by the surveyor, on any of the said days; then every such person who should have sent any such team, draught, or plough according to the directions aforesaid, shall, according to the notice given to him by the surveyor, send unto the said work, for every one so spared, 3 able men; or to pay to the surveyor 4 s 6 d in lieu thereof. *f. 35.*

And

Highways in general.

And where the employment for teams is of such sort, that two horses will be sufficient for one cart, or where a stand cart with one horse shall be necessary, the surveyor may call upon any person liable to send a team, draught, or plough according to this act, who keeps one or more cart or carts, and 3 or more horses, to send such cart or carts, horse or horses, to perform his statute duty, as the surveyor shall find most convenient; and he shall allow every such stand cart and one horse as half a team, and every cart and two horses as two thirds of a team. And if a waggon shall be found necessary for any particular business, the surveyor may require the duty, or any part thereof, to be performed with such waggon, by any person who keeps one. Which directions of the surveyor shall be observed, or the person liable to perform such duty shall forfeit such sum as the duty so required of him shall bear, in proportion to the forfeiture hereby inflicted for every neglect in performing duty with a team, draught, or plough. *s.* 36.

V. Composition instead of labour.

Any person liable to perform the duty by sending a team, draught, or plough, with men, horses, or oxen in manner aforesaid, may compound for the same, if he thinks fit, by paying to the surveyor such sum as the justices at their Michaelmas special sessions in every year shall adjudge to be reasonable, not exceeding 6s nor less than 3s, for each team, draught, or plough, for each day; and in default of their adjudging the same, then the sum of 4s 6d: — for every cart and one horse or beast of draught 2s: — for every cart with two horses or beasts of draught 3s, — for and in lieu of each day's duty. And every inhabitant liable to perform such duty or labour, and not chargeable in any other respect, may compound for 4d each day. *s.* 38.

Provided, that if it shall appear to the justices at their special sessions to be held in the week next after the Michaelmas quarter sessions, that in any place there will be a difficulty in procuring the necessary carriage, or a sufficient number of labourers, without paying high and extravagant prices for the same; the said justices may order the team duty, or so much thereof as they shall think fit, to be performed in kind, except in respect of such teams as belong to persons who do not occupy 3ol a year; and

and also may order the labourers, or such part of them as they shall think fit, to perform the labour in kind, on being paid for such labour the usual wages given to labourers in such parish, township, or place, deducting thereout the sum of 4d for each day, being the composition hereby allowed for labourers. 13 G. 3. c. 78. §. 39.

Provided, that if part of such teams or labourers only are required, it shall be directed by the said order of the justices in some given proportion, as one half, third, or fourth part thereof; and the surveyor shall in that case, at a public vestry put the names of all the persons liable to send such teams into one hat or box, and the names of all the persons liable to perform such labour into another hat or box; and some inhabitant then present shall draw out such number from each, as shall be equal to the proportion so ordered by the justices; and the persons so drawn shall perform such duty in kind for that year. And if any such order shall be made or continued in the subsequent year, the same method shall be observed, but the names drawn in the preceding year shall not be put into such hat or box. And in every succeeding year, such method and regulation shall be observed by the surveyor, as to render the duty so required to be performed in kind as equal amongst the several persons liable thereto as may be. Which order of the said justices, so far as the same shall be extended, shall supersede the said power or liberty of compounding, and shall be binding and effectual to all intents and purposes, and shall continue in force until it shall be discharged or varied by the justices at some subsequent special sessions to be held in the week next after Michaelmas quarter sessions. §. 39.

And if any person shall keep a team, draught, or plough, and shall not occupy 30l a year in the parish, township, or place where he shall reside, but shall in part maintain his horses and beasts of draught used in such team, upon or from lands which he shall occupy in one or more adjacent parish or parishes; it shall be lawful for the justices, at some special sessions, to mitigate and reduce the duty or composition in such manner as they shall think reasonable. §. 40.

Provided, that the surveyor shall on some Sunday in November yearly, cause ten days notice (F) at least to be given in the church or chapel, and if there be no church or chapel, or no service be performed therein, then at the most publick place there, and repeat the like notice on the next succeeding Sunday, of the time and place when

when and where persons persons permitted and inclined to compound may signify to the surveyor their intention so to do; and every person signifying the same, who shall then, or within one month after, pay to the surveyor the aforesaid composition, shall be discharged from the performance of such duty. And no composition shall be permitted, unless the same be paid at the day, or within the time aforesaid. *f. 41.*

But where the occupation shall be changed, or a new occupant or inhabitant shall come to reside, after the time appointed for the composition; such occupant, or person coming to reside, may be allowed to compound afterwards, provided they pay the composition money within 14 days after they shall enter upon the premises. And every tenant or occupier, who intends to quit the possession within 6 months from the time fixed for the composition, may compound for half the duty; and the succeeding tenant or occupier may compound or perform the duty in kind for the other half. *Id.*

Provided, that where a person shall keep a draught or plough, and no carriage; he shall pay to the surveyor 1 s for every horse or pair of oxen or neat cattle used in such draught or plough for each day's duty, or pay according to the yearly value of the estate which he occupies as aforesaid, at the option of the surveyor. *f. 42.*

And whereas by several acts of parliament concerning turnpike roads, a certain part of the duty called statute duty is directed to be performed on such roads, and it may happen in such places, that the several persons liable thereto may have compounded for the same; in such case, the surveyor of the parish, township, or place, where such composition shall have been made, shall pay to the turnpike treasurer or surveyor, a proportionable part of the composition money so received, according to the number of days duty which such persons were liable to perform on such turnpike road: which money shall be laid out on such part of the said turnpike road, as lies within the parish, township, or place from which it was received, and not elsewhere. And if such surveyor of the highways shall refuse or neglect to pay to the turnpike treasurer or surveyor such part of the said composition money so received by him, on demand thereof made, it shall be levied on his goods and chattels in like manner as penalties and forfeitures are to be levied by this act. *f. 44.*

VI. Working.

1. The justices at a special sessions may, by writing under their hands and seals, order those highways (not being turnpike) which in their opinion do most want repair, to be first amended, and at what time, and in what manner; according to which order (if such there be) the surveyors shall proceed within their respective limits. *The justices may order what roads shall be repaired first.*

13 G. 3. c. 78. s. 25. If the justices make no such order, then the surveyors shall have the like power of direction.

2. Provided that, in order to prevent as much as possible any inconvenience to persons liable to perform statute duty, it shall be lawful for the inhabitants of any parish, township, or place, at a vestry or other public meeting, to appoint 3 months in every year, within which no statute duty shall be performed; viz. one month in the spring, to be called the seed month; one month in the summer, for the hay harvest; and one month in the summer, for the corn harvest: Provided, that notice in writing be given of the times so appointed, to the surveyor of such parish, township, or place, and also to the surveyor of every turnpike road lying within the same, within 3 days after such meeting, and 14 days at least before the beginning of each of such months. *Exception of three months in the year.* 13 G. 3. c. 78. s. 43.

3. The surveyor shall give, or cause to be left at the house or usual place of abode of every person liable to perform statute duty, four days notice (G) at the least, of the day, hour, and place, upon which each of the said day's duty shall be required to be performed. *Notice of the time and place of working.* 13 G. 3. c. 78. s. 37.

4. And the surveyor shall fairly and equally demand and require the duty and labour from every person without favour or partiality. And the several persons shall respectively bring with them such shovels, spades, picks, mattocks, and other tools and instruments, as are useful and proper for the purposes aforesaid. *Manner of working.* 13 G. 3. c. 78. s. 35.

And all the said persons and carriages shall diligently perform the work and labour to which they shall be appointed by the surveyor, for 8 hours in every of the said days, within such parish, township, or place, or in getting and carrying materials in and from any other parish, township, or place, to be employed in the repair

of the highways of the parish, township, or place, for which they shall be required to perform such duty and labour as aforesaid. *id.*

Penalty of not working according to the direction of the surveyor.

5. If any person sending a team as aforesaid, shall not send a sufficient labourer besides the driver (except as herein before mentioned); or if any such labourer or driver, or any other labourer, or the driver of any cart, shall refuse to work and labour according to the direction of the surveyor; or if any driver shall refuse to carry proper and sufficient loads: the surveyor may discharge every such team, cart, or labourer, and recover from the owner of every such team or cart, the forfeiture which every such person would have incurred, in case no team, cart, or labourer respectively had been sent. 13 G. 3. c. 78. s. 35.

Penalty of not attending.

6. And every person making default in finding and sending such wain, cart, or carriage, with such able men as aforesaid, shall forfeit 10 s; for every default in sending a cart with one horse and one man, 3 s; and for not sending a cart with two horses and one man, 5 s; and every person making default in sending any such labourer, or in performing such labour at the time and place, and in the manner directed by this act, or in paying composition for the same, shall, for every such neglect forfeit 1 s 6 d: All which forfeitures shall be applied for the use of the highways within the parish, township, or place, where the same shall arise. And the surveyor shall, with all convenient speed, proceed for the recovery thereof, that the same may be recovered before he makes up his accounts. 13 G. 3. c. 78. s. 37.

Case where the whole duty is not needed.

7. If in any place it shall not be necessary to call forth the whole duty in any year, it shall be abated in a just and equal proportion. 13 G. 3. c. 78. s. 37.

VII. Materials how to be procured.

Getting materials.

1. The surveyor may take and carry away so much of the rubbish or refuse stones of any quarry within his district (except such as shall have been got by the surveyor of any turnpike road) without the licence of the owner of such quarry, as he shall judge necessary for the amendment of the said highways; but shall not dig or get stone in such quarry without leave of the owner. 13 G. 3. c. 78. s. 27.

It shall also be lawful for such surveyor, for the use aforesaid, in any waste land, or common ground, river, or brook,

brook, within his district, or within any other parish, township, or place, wherein gravel, sand, chalk, stone, or other materials are likely to be found (in case sufficient cannot be conveniently had within the parish, township, or place where they are to be employed, and in case sufficient shall be left for the use of the roads in such other parish, township, or place) to search for, dig, get, and carry away the same; so as he do not thereby divert or interrupt the course of such river or brook, or prejudice or damage any building, highway, or ford, nor dig or get the same out of any river or brook within the distance of 100 feet above or below any bridge, nor within the like distance of any dam or wear: — And likewise to gather stones lying upon any lands or grounds within the parish, township, or place where such highway shall be, for such service and purpose: — And to take and carry away so much of the said materials, as by him shall be thought necessary for the amendment of the said highways, without making any satisfaction for the said materials: But satisfaction shall be made for all damages done to the lands of any person by carrying away the same, in the manner herein after directed for getting and carrying materials in inclosed lands or grounds. *Id.*

But no such stones shall be gathered without the consent of the occupier of the lands, or a licence from a justice, after having summoned the occupier and heard his reasons (if he shall appear and give any) for refusing his consent. *Id.*

And provided also, that nothing herein contained relative to the gathering or getting of stones, shall extend to any quantity of land (being private property) covered with stones thrown up by the sea, commonly called Beach. *s. 28.*

And it shall be lawful for the surveyor, for the use aforesaid, to search for, dig, get, and carry away sand, gravel, chalk, stone, or other materials, if sufficient cannot conveniently be had within such waste lands, common grounds, rivers, or brooks, in and thro' any of the several or inclosed grounds of any person whomsoever, within the parish, township, or place where the same shall be wanted, or by licence of two justices at a special sessions, within any other parish, township, or place, adjoining or lying near to the highway for which such materials shall be required, if it shall appear to such justices that sufficient materials cannot be conveniently had in the parish, township, or place where such highways lie, or in the waste

waste lands, or common grounds, rivers, or brooks of such adjacent parish, township, or place, and that a sufficient quantity of materials will be left for the use of the parish, township, or place where the same shall be (such lands not being a garden, yard, avenue to a house, lawn, park, paddock, or inclosed plantation); the surveyor making such satisfaction for the damage to be done to such lands by the getting and carrying away the same, as shall be agreed upon between him and the owner, occupier, or other person interested, in the presence and with the approbation of two or more substantial inhabitants; and if they cannot agree, then to be settled by a justice of the limit where the lands lie. *s. 29.*

And in such places where, from the want of other materials, burnt clay may be substituted in the place thereof, it shall be lawful for the surveyor to dig clay in such places as he is authorized to dig chalk or gravel, and to dry the same upon the lands adjoining, and to burn the same upon any waste lands or common grounds, and to carry such clay in such manner as other materials are allowed to be carried by this act, upon making such satisfaction for the damages within the several inclosed lands where such clay shall be placed or carried, as herein directed with regard to other materials. *id.*

Provided, that when the owner of such inclosed lands shall have occasion for any such materials for the repair of any highway or other roads or ways upon his estate, or which he shall be under obligation to repair, and shall give notice to the surveyor that he apprehends there will not be sufficient for those purposes and also for the use of the public highways; in such case the surveyor shall not be permitted to dig or take such materials without the consent of such owner, or an order of two justices, after having summoned and heard the said owner or occupier, or his steward or agent: which justices shall permit or restrain such power, in such manner, and under such directions, as to them shall seem just. *id.*

Provided, that no stone, gravel, or materials, to be dug for the use of any other parish, township, or place than that wherein the same are found, shall be removed or carried from the place where they shall be so dug, at any other time than between the first of April and the first of November, or in the time of hard frost in the winter season. *s. 32.*

And if any person shall dig or cause to be dug materials contrary to the directions of this act, whereby any bridge, mill, building, dam, highway, ford, mines, or
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in works, may be damaged or indangered; he shall forfeit not exceeding 5 l nor less than 20 s, at the discretion of the court or justices before whom complaint shall be made. *f. 33.*

And where a sufficient quantity of stone, gravel, chalk, or other materials, cannot be provided and carried by the labourers and teams within any parish, township, or place; the surveyor shall contract for the getting and carrying thereof (in presence of the assistant, if any such be appointed) at a meeting to be held for that purpose; of which, ten days notice in writing shall be given, by fixing the same upon the door of the church or chapel, or if there be no church or chapel, at the most public place there; which notice shall specify the work to be done, and the time and place for letting thereof. And if the surveyor shall have any share or interest in such contract, or in any other contract for work or materials, or shall upon his own account let to hire any team, or sell or dispose of any timber, stone, or other materials (unless a licence in writing for the sale of such materials, or for letting to hire such team, be first obtained from a justice); he shall forfeit 10 l, and be for ever after incapable to be employed as a surveyor with a salary. *f. 49.*

2. If any surveyor or person employed by him shall, *Filling up holes,* by reason of the searching for, digging, or getting any gravel, sand, stones, chalk, clay, or other materials, make any pit or hole in such lands, rivers, or brooks as aforesaid, wherein such materials shall be found; he shall forthwith cause the same to be sufficiently fenced off, and such fence supported and repaired, during such time as the said pit or hole shall continue open; and after having dug up sufficient materials in such pit or hole, he shall within 14 days cause the same to be filled up, sloped down, or fenced off, and so continued. And where no materials shall be found, he shall within 3 days cause such hole or pit to be filled up, levelled, and covered with the turf or clod which was dug out of the same. *13 G. 3. c. 78. f. 31.*

And every surveyor shall, within 20 days after he shall be appointed to that office, cause all the pits and holes which shall then be open, and not likely to be further useful, to be filled up or sloped down in manner aforesaid; and if they are likely to be further useful, he shall secure them by posts, and rails, or other fences, to prevent accidents to persons or cattle. *id.*

And if such surveyor or other person shall neglect to fill up, slope down, or fence off such pit or hole, in manner and within the time aforesaid; he shall forfeit 10 s. And if he shall neglect to fence off such pit or hole, or to slope down the same, as herein before directed, for six days after he shall have received notice for either of those purposes from a justice, or from the owner or occupier of such several ground, river, or brook, or any person having right of common within such common or waste lands; he shall on conviction before one justice, forfeit not exceeding 10 s. nor less than 40 s; the same to be applied in the fencing off, filling up, or sloping down such pit or hole, and towards repair of the roads in the parish or place where the offence was committed, as such justice shall direct *id.*

VIII. Removing obstructions and annoyances.

Annoyances in general.

1. There is no doubt, but that all injuries whatsoever to any highway, as by digging a ditch, or making a hedge overthwart it, or laying logs of timber in it, or doing any other act which will render it less commodious to the king's people, are publick nuisances at common law. 1 *Haw.* 212.

And by the common law, any one may abate a nuisance to a highway, and remove the materials; but not convert them to his own use. 1 *Haw.* 214.

Also it seemeth that an heir may be indicted for continuing an incroachment, or other nuisance to a highway begun by his ancestor; because such a continuance thereof amounts in the judgment of law to a new nuisance. 1 *Haw.* 214.

To suffer the ditches adjoining to a highway to be fouled by reason whereof it is impaired, is a nuisance at common law. 1 *Haw.* 212.

And it seemeth clear, that it is a nuisance at common law, to suffer the boughs of trees growing near the highway, to hang over the road in such a manner, as thereby to incommode the passage. 1 *Haw.* 212.

And perhaps it is the better opinion, that he who has trees next adjoining to the highway, and hanging over it to the annoyance of the people, is bound by the common law to lop the same; and it seems clear, that any person may justify the lopping such trees, so far as to avoid the nuisance. 1 *Haw.* 213.

A gate erected in a highway, is a common nuisance, because it interrupts the people in that free and open passage which they before enjoyed, and were lawfully entitled to; but where such a gate has continued time out of mind, it shall be intended, that it was set up at first with consent, on a composition with the owner of the land on the laying out the road, in which case the people had no other right to a freer passage than what they still enjoy. *1 Haw. 199.*

1. No tree, bush, or shrub shall be permitted to stand or grow in any highway, within the distance of 15 feet from the centre thereof (except for ornament or shelter to the house, building, or court yard of the owner thereof); or hereafter be planted within the distance aforesaid: But the same shall be cut down, grubbed up, and carried away, by the owner or occupier of the land or soil, within ten days after notice to him or his agent of the surveyor; on pain of 10 s. *13 G. 3. c. 78. s. 6.* And the possessors of the land next adjoining shall cut, prune, or plash their hedges; and also cut down or lop the trees growing in or near such hedges or other fences (except those trees planted for ornament or shelter as aforesaid), in such manner, that the highway shall not be prejudiced by the shade thereof, and that sun and wind may not be excluded from such highway to the damage thereof. And if such possessor shall neglect, within ten days after notice (H) given by the surveyor, to cut, prune, and plash such hedges, and cut down or lop such trees; the surveyor may complain to a justice, who shall summon the possessor of the said land to appear before the justices at some special session to answer to the said complaint; and if it shall appear to the justices at such special sessions, that such possessor hath not complied with the requisites of this act, the said justices, upon hearing the surveyor and the possessor of such land or his agent (or, in default of appearance, on having due proof of the service of such summons) may order such hedges to be cut, plashed, and pruned, and such trees to be cut down or pruned; in such manner as may best answer the purposes aforesaid. And if the possessor of such land shall not within ten days comply with such order on notice thereof; he shall forfeit 2 s. for every 24 feet in length of such hedge which shall be neglected to be cut and plashed, and 2 s. for every tree which shall be neglected to be cut down, or pruned,

Trees, hedges,
ditches, drains,

pruned, and lopped ; and the surveyor shall cause the same to be done, and the possessor shall pay, over and above the penalties, the charges and expences (I) of doing the same ; to be levied by distress by warrant of one justice

f. 7.

And ditches, drains, or watercourses, of a sufficient depth and breadth for keeping the highways dry and conveying the water from the same, shall be made, scoured, cleansed, and kept open, and sufficient trunks, tunnels, plats, or bridges, shall be made and laid, where any ways, horse ways, or footways, lead out of the said highways into the lands adjoining thereto,—by the occupier of such lands ; and every person who shall occupy any lands adjoining to or near the highway, thro' which the water hath used to pass from the said highway, shall open, cleanse, and scour the ditches, watercourses, or drains, for such water to pass without obstruction : And every person making default in any of the matters aforesaid, after ten days notice given by the surveyor, shall forfeit 10 s. *f. 8.*

Provided, that no person shall be compelled, or any surveyor permitted, to cut or prune any hedge at any other time, than between the last day of September and the last day of March ; and that no person shall be obliged to fell any timber trees growing in hedges at any time whatsoever, except where the highways shall be ordered to be enlarged as herein after mentioned, or to cut down or grub up any oak trees growing in such highway or in such hedges, except in the months of April, May, or June, or any ash, elm, or other trees, in any other months than December, January, February, or March *f. 13.*

And where the ditches, gutters, or watercourses, which have been usually made, or which are herein directed to be made, cleansed, and kept open, shall not be sufficient to carry off the water which shall lie upon and annoy the highways ; in such case, it shall be lawful for the surveyor by order of one justice (K) to make new ditches and drains in and thro' the lands adjoining or lying near to such highways, or in and thro' any other lands, if it shall be necessary, for the more easy and effectual carrying off such water from the said highways, and also to keep such ditches, gutters, or water-courses scoured, cleansed, and opened ; and the surveyors and their workmen may go upon the said lands for that purpose : Provided, that the said surveyor make proper trunks, tunnels, plats, bridges, or

ches, over such ditches, gutters, or watercourses, where the same shall be necessary, for the convenient use and enjoyment of the lands thro' which the same shall be made, and from time to time keep the same in repair; and do also make satisfaction to the owner or occupier of such lands which are not waste or common, for the damages which he shall sustain thereby; to be settled and paid in such manner as the damages for getting materials in several or inclosed grounds are herein directed to be settled and paid. *f. 14.*

3. If any person shall lay in any highway any stone, timber, straw, dung, or other matter; or in making, repairing, or cleansing the ditches or watercourses, shall permit the soil or earth dug out thereof, to remain in the highway, so as to obstruct or prejudice the same, for 5 days after notice (H) by the surveyor; he shall forfeit 10 s. 13 G. 3. c. 78. *f. 9.*

Straw, dung, or other matter laid in the highway.

And if any stone or timber, or any hay, straw, stubble, or other matter, for the making of manure, or on any other pretence not tolerated by this act, shall be laid in any highway within 15 feet from the centre thereof; and shall not, within 5 days after notice given by the surveyor to some person aggrieved thereby, be removed; the owner or possessor of the lands adjacent, or any other person by order of a justice, may clear the said highway, by removing the stone, timber, hay, straw, dung, or other matter, and have the same to his own use. *f. 10.*

4. If any person shall incroach by making or causing to be made any hedge, ditch, or other fence on any highway not being turnpike road, within the distance of 15 feet from the middle or centre thereof; or shall plow, harrow, or break up the soil of any land or ground, or in roughing or harrowing the adjacent lands shall turn his plough in or upon any land or ground, within the distance of 15 feet from the middle or centre of any highway, where the breadth of such highway is formed and marked or described with certainty, and doth not exceed in breadth 10 feet; he shall forfeit 40 s to him who shall make information thereof: And the surveyor may cause such hedge, ditch, or fence to be taken down, or filled up, at the expense of the person to whom the same shall belong: And the justice, on proof to him made upon oath, may levy as well the expences of taking down such hedges, as the said penalty, by distress. 13 G. 3. c. 78. *f. 63.*

Incroaching on the highway.

5. The surveyor shall, at all such times as he shall judge proper, view all the common highways, trunks,

Surveyor to give notice, and cause defects to be amended.

tunnels, plats, hedges, ditches, banks, bridges, causeways, and pavements; and if he shall observe any nuisances, incroachments, obstructions, or annoyances, he shall give to any person doing or permitting the same personal notice, or notice in writing (H) to be left at his usual place of abode, specifying the particulars: And if such nuisances, obstructions, or annoyances shall not be removed; and the ditches, drains, gutters, and water courses aforesaid effectually made, scoured, cleansed, and opened; and such trunks, tunnels, plats, and bridges made and laid; and such hedges properly cut and pruned, within 20 days after such notice, then the surveyor shall do the same, and the person neglecting shall forfeit for every foot in length one penny, and over and above the said forfeiture the surveyor shall by such person be reimbursed his charges and expences in doing the same; and if not paid on demand, the surveyor shall apply to a justice, and on making oath before him of the notice being given as aforesaid, and of the work being done, and of the expence attending the same, the surveyor shall be repaid by such person all such charges as shall be allowed to be reasonable by the said justice (I); and if not paid on demand the same shall be levied as other penalties and forfeiture by this act. 13 G. 3. c. 78. s. 12.

Carriages or implements of husbandry left in the highway.

6. If any person shall wilfully set or leave any waggon, cart, or other carriage, or any plough or instrument of husbandry in any highway (except only with respect to such waggon, cart, or carriage, during such reasonable time as the same shall be loading or unloading, and standing as near the side of such highway as conveniently may be) so as to interrupt or hinder the free passage of any other carriage, or of his majesty's subjects, he shall forfeit 10 s. s. 11.

Drivers of carriages must be having.

7. By the 1 G. 2. c. 57. If any person driving any cart, dray, or waggon, in the streets of London, shall ride upon the same, not having some other person on foot to guide the same; he shall on conviction before the alderman of the ward, or a justice of the peace, on oath of one witness, forfeit 10 s, by distress and sale; half to the informer, and half to the poor; and in default of payment, to be sent to the house of correction for three days. s. 8.

And by the 24 G. 2. c. 43. If any carter, drayman, carman, waggoner, or other driver shall ride upon the same in London or within ten miles thereof, not having some other person on foot to guide the same, he shall

on the like conviction, forfeit 10s in case such driver shall not be the owner of such carriage; and in case he be the owner, then any sum not exceeding 20s. To be recovered, levied, and applied, as by the aforesaid act of the 1 G. 2. c. 57: And any person, though not a peace officer, may stop and apprehend such offender, and carry him as soon as conveniently may be before a justice; and if any person shall resist, abuse, or prevent any person endeavouring to apprehend such offender, or when he is apprehended, shall rescue, or endeavour to rescue him, he shall forfeit 20s in like manner. *f. 8, 9.*

By the 30 G. 2. c. 22. If the driver of any carriage within *London* or *Westminster*, or in any publick street or common highway within the bills, shall by negligence or wilful misbehaviour, interrupt the free passage of his majesty's subjects; he shall on conviction by confession or oath of one witness, before one justice forfeit any sum not exceeding 20s, or be committed to the house of correction, or some other prison of the place where the offence shall have been committed, or the offender shall have been apprehended, to be kept to hard labour for any time not exceeding one calendar month. The said forfeiture to be levied by distress by warrant of such justice; and to be half to the prosecutor, and half to the overseers for the use of the poor of the parish or place where the offence shall be committed, or the offender shall be apprehended; and if there be no overseers, then to some other officer for the use of the poor as aforesaid. *f. 7, 12.*

And any person who shall see any offence committed against this act, may by authority of this act and without any other warrant apprehend the offender, and shall with all convenient speed convey or deliver him to a constable or other peace officer of the place where the offence shall be committed or the offender shall be apprehended, in order to be conveyed before a justice, there to be dealt with according to law. *f. 13.*

And if he shall refuse to discover his name and place of abode, to the justice before whom he shall be brought; he shall be immediately delivered over to a constable or other peace officer, and shall by him be conveyed to the common gaol or house of correction of the place where the offence shall be committed, there to remain until he shall declare his name and place of abode to the said justice, or to some other justice of such place. *f. 11.*

Highways in general.

And any person shall be admitted to be an evidence, notwithstanding his being an inhabitant of the place where the offence shall be committed. *f. 14.*

Provided, that persons punished by this act shall not be punished by any former law. *f. 15.*

And more generally, by the 13 G. 3. c. 78. Whereas many bad accidents happen, and great mischiefs are frequently done upon the streets and highways, by the negligence or wilful misbehaviour of persons driving carts thereon; it is enacted, That if the driver of any cart, car, dray, or waggon, shall ride upon any such carriage in any street or highway, not having some other person on foot or on horseback to guide the same (such carriages as are conducted by some person holding the reins of the horse or horses drawing the same excepted); — or if the driver of any carriage whatsoever, on any part of any street or highway, shall by negligence or wilful misbehaviour cause any hurt or damage to any person or carriage passing or being upon such street or highway; — or shall quit the highway and go on the other side of the hedge or fence inclosing the same; — or wilfully be at such distance from such carriage, whilst it shall be passing upon the highway, that he cannot have the direction and government of the horses or cattle drawing the same; — or shall, by negligence or wilful misbehaviour, prevent, hinder, or interrupt the free passage of any other carriage, or of his majesty's subjects, on the said highways; or if the driver of any empty or unloaded waggon, cart, or other carriage, shall refuse or neglect to turn aside and make way for any coach, chariot, chaise, loaded waggon, cart, or other loaded carriage; — or if any person shall drive, or act as the driver, of any such coach, post chaise, or other carriage, let for hire, or waggon, wain, or cart, not having the owner's name (as by this act is directed) painted thereon, or shall refuse to discover the true christian and surname of the owner of such respective carriage: he shall, on conviction by confession, view of the justice, or oath of one witness, before one justice, forfeit any sum not exceeding 10 s, in case such driver be not the owner of such carriage, and if he be the owner, then any sum not exceeding 20 s; and in default of payment be committed to the house of correction for any time not exceeding one month, unless the same be sooner paid. And every such driver offending in either of the said cases, may by authority of this act, with or without any warrant, be apprehended by any person who shall see such offence

offence committed, and shall be immediately conveyed or delivered to a constable or other peace officer, to be conveyed before a justice, to be dealt with according to law. And if any driver, in any the cases aforesaid, shall refuse to discover his name; the justice may commit him to the house of correction for any time not exceeding 3 months, or may proceed against him for the penalty by a description of his person and the offence, and expressing in the proceedings that he refused to discover his name. *f. 60.*

And for the better discovering of offenders, the owner of every waggon, wain, or cart, and also of every coach, post chaise, or other carriage, let to hire, shall cause to be painted, upon some conspicuous part of his waggon, wain, or cart, and upon the pannels of the doors of all such coaches, post chaises, or other carriages, before the same shall be used in any public highway, his christian and surname and place of abode, in large legible letters; and continue the same thereupon so long as such carriage shall be used upon any highway: And the owner of every common stage waggon or cart shall, over and above his christian and surname, cause to be painted on the part and in the manner aforesaid, the following words, *common stage waggon or cart*, as the case may be. And every person using any such carriage as aforesaid upon any highway, without the said names and descriptions respectively, or causing to be painted thereon any fictitious name or place of abode, shall forfeit not exceeding 5 l, nor less than 20s. *f. 59.*

8. And for preventing obstructions near public bridges; if any person, collecting any tolls payable for passing over any public bridge with carriages or cattle of any kind, shall keep any victualling house, alehouse, or other place of public entertainment; or shall sell, or permit to be sold therein, any wine, beer, ale, cyder, spirituous liquors, or other strong liquors, by retail,—he shall, on conviction before one justice, by confession, or oath of one witness, forfeit 5 l. 13 G. 3. c. 78. *f. 62.*

Alehouses not to be near bridges.

IX. Direction posts, blocks, mile stones, water marks, and battlements of bridges.

The justices at a special sessions, shall issue their precept (L) to the surveyor, where several highways meet, and there is no proper or sufficient direction post or stone already fixed or erected, requiring him forthwith to cause

to be erected or fixed, in the most convenient place where such ways meet, a stone or post, with inscriptions thereon, in large legible letters, painted on each side thereof, containing the name or names of the next market town or towns, or other considerable place or places to which the said highways lead; and also at the several approaches or entrances to such parts of any highways, as are subject to deep or dangerous floods, graduated stones or posts, denoting the depth of water in the deepest part of the same, and likewise such direction posts or stones as the said justices shall judge to be necessary for the guiding of travellers in the best and safest tract thro' the said floods or waters: And if he shall refuse or neglect, by the space of 3 months, to cause such stones or posts to be fixed; he shall forfeit 20s. 13 G. 3. c. 78. s. 26.

And whereas in some places it may be necessary, to secure horse and foot causeways by posts, blocks, or great stones fixed in the ground, or by banks of earth cast up, or otherwise, from being broken up and spoiled with waggons, wains, carts, or carriages; and forasmuch as divers evil disposed persons do wilfully or wantonly pull up, cut down, and remove or damage the said posts, blocks, and great stones, and drive carriages upon such banks and causeways or against the sides thereof, and also dig or cast down the said banks, whereby the causeways or banks are often ruined and destroyed; — and such evil disposed persons do or may break, damage, or throw down the stones, bricks, or wood, fixed upon the parapets or battlements of bridges; — and pull down, destroy, obliterate, or deface any mile stone or post, graduated or direction post or stone, erected upon any highway: For prevention thereof, it is enacted, that every person who shall be guilty of any such offence, shall upon conviction before one justice, by the oath of one witness, or upon view of the justice, forfeit not exceeding 5l, nor less than 10s; and in default of payment, shall be committed to the house of correction, there to be whipped and kept to hard labour for any time not exceeding one calendar month, nor less than 7 days. s. 52.

X. Breadth of wheels, and number of horses.

Whereas the highways, not being turnpike roads, are much prejudiced by the narrowness of the wheels of the several carriages travelling thereon, and by the excessive

cessive burdens loaded in such carriages; it is enacted, That no waggon, having the sole or bottom of the fellies of the wheels of the breadth of 9 inches, shall be drawn with more than 8 horses; and no cart, having the sole or bottom of the fellies of the wheels of the breadth of 9 inches, shall be drawn with more than 5 horses:

And no waggon, having the sole or bottom of the fellies of the wheels of the breadth of 6 inches, and rolling on each side a surface of 9 inches, shall be drawn with more than 7 horses:

And no waggon, rolling a surface of 6 inches only, shall be drawn with more than 6 horses; and no cart, having the sole or bottom of the fellies of the wheels of the breadth of 6 inches, shall be drawn with more than 4 horses:

And no waggon, having the sole or bottom of the fellies of the wheels of less breadth than 6 inches, shall be drawn with more than 5 horses; and no cart, having the sole or bottom of the fellies of less breadth than 6 inches, shall be drawn with more than 3 horses:

On pain that the owner shall forfeit 5 l, and the driver (not being the owner) 10 s, for every horse or beast above the number respectively, to the sole use of the informer. 13 G. 3. c. 78. s. 55.

But carriages moving upon wheels or rollers of the breadth of 16 inches on each side thereof, with flat surfaces, shall be allowed to be drawn with any number of horses or other cattle. *Id.*

And provided, that no prosecution shall be commenced before a justice, against such owner or driver, unless the information be laid within 3 days; and no action shall be commenced unless within one Kalendar month, after the offence committed; and neither information nor action shall be brought, unless notice be given by the informer to the driver, on the day whereon the offence shall be committed, of an intention to complain of such offence: And if it shall appear to the justice before whom the complaint shall be made, that the offender lives so remote as to make it inconvenient to summon him to appear before such justice, the said justice may dismiss the complaint, and leave the informer to his remedy by action at law. s. 56.

And provided always, that the justices, at the Michaelmas quarter sessions, may license in such manner and for such time as they shall think fit, an increase of the number of horses to be drawn in carriages up any steep

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steep hill, or on any road not turnpike, over and above the number herein before limited; and from time to time, at any Michaelmas quarter sessions, may revoke, alter, or vary the same, as they shall think fit. *f. 57.*

And provided, that if it shall appear, upon the oaths of credible witnesses, to the satisfaction of any justice of the peace, or of any court of justice authorized to enforce the execution of this act, that any waggon, cart, or carriage, could not, by reason of deep snow or ice, be drawn by the number of horses or beasts of draught hereby allowed; they may stop the proceedings before them for recovery of the forfeiture. *f. 58.*

Provided also, that nothing herein, concerning the number of horses and wheels of carriages, shall extend to carts, waggons, or other carriages, employed only in carrying any one stone, block of marble, cable rope, or piece of metal, or piece of timber, or to such ammunition or artillery as shall be for his majesty's service. *Id.*

And for all the purposes of this act, two oxen or horned cattle shall be considered as one horse. *Id.*

With respect particularly to the cities of London and Westminster and parts adjacent, it is enacted, by the 6 G. c. 6. that no person in London and Westminster, or within 10 miles thereof, shall carry at any one load, in waggons or carts having their wheels shod with iron, more than 12 sacks of meal of 5 bushels each, nor more than 12 quarters of malt, nor more than 700 $\frac{1}{2}$ of bricks, nor more than one chalders of coals; on pain of forfeiting any one of the horses, with the geers, bridles, and halters therewith used, in such manner and to such uses, as by the 5 G. c. 12. (now repealed.)

And by the 18 G. 2. c. 33. The wheels of every cart, car, or dray, within the bills of mortality, shall be six inches broad in the felly, and not wrought about with iron, nor be drawn with above the number of three horses, after they are up the hills from the water side; on pain of 40s by warrant of one justice, by distress; and for want of distress, or non-payment in six days after demand, to be committed till paid: But this not to extend to any country cart or waggon, that shall bring any goods, or shall carry any goods half a mile beyond the paved streets of the said cities and places.

Also any person, within the said limits, using any cart, car, or dray, having the wheels full six inches broad, when worn, may have the same bound round with tire of iron,

iron, provided it be six inches broad, and made flat, and not set on with rose-headed nails.

XI. Breadth, widening, changing, and diverting of highways.

By the common law, an ancient highway cannot be changed, without the king's licence first obtained upon a writ of *Ad quod damnum* and an inquisition thereon found, that such a change will not be prejudicial to the publick; and it is said, that if one change a highway without such authority, he may stop the new way whenever he pleases; and it seemeth that the king's subjects have not such an interest in such new way, as will make good a general justification of their going in it as a common highway, but that in an action of trespass brought by the owner of the land, against those who shall go over it, they ought to shew specially, by way of excuse, how the old way was obstructed, and the new one set out; also it is said, that the inhabitants are not bound to keep watch in such a new way, or to make amends for a robbery therein committed, or to repair it. 1 *Haw.* 201.

But by the 13 G. 3. c. 78. where any highway shall be inclosed after a writ of *Ad quod damnum* issued, and inquisition thereupon taken; any person that shall think himself injured by such inclosure, may appeal to the next general quarter sessions, if there be time for that purpose; if not, to the next sessions after: And the determination of such sessions shall be final. *f.* 19.

[Note, the writ of *Ad quod damnum* is an original writ, issuing out of and returnable into the chancery, directed to the sheriff to inquire by a jury, whether such change will be detrimental to the publick; which inquisition, being a proceeding only *ex parte*, is in its own nature traversable, and heretofore the party grieved might be heard against it before the chancellor: But now, by this act, jurisdiction is given to the justices in sessions to hear and determine appeals.]

Where a new road is made, in pursuance of such writ and inquisition thereupon found, after the person who sued out the writ hath once made the said road, the parishioners ought to keep it in repair for the future; because, being discharged from the repairing of the old road, no new burden is laid upon them, but their labour is only transferred from one place to another. 3 *Atk.* 766.

But

But if the new road lies in another parish, then the person who sued out the writ, and his heirs, ought not only to make it, but to keep it in repair; otherwise the parishioners would have a new charge upon them, and no recompence by the former road being taken away. *Id.* Venner and Lucy, Jan. 29, 1764.

Also, it is certain, that a highway may be changed by the act of God; and therefore it hath been holden, that if a water which has been an ancient highway, by degrees changes its course, and goes over different ground from that whereon it used to run, yet the highway continues in the new channel, in the same manner as in the old. 1 *Haw.* 202.

An highway inclosed by virtue of a special act of parliament (for dividing and inclosing common fields, common pastures, or the like,) shall continue to be repaired by the parish or township as it was before, unless otherwise directed by the act: For if he who inclosed the ground adjoining to the highway were in such case obliged to repair, it might happen that his allotment of the common would not be worth the expence of repairing the way. *Burr. Mansf.* 461. K. and Inhabitants of Flecknow. H. 30 G. 2.

In aid of the common law, and to render the changing of highways less troublesome and expensive, power is given by the 13 G. 3. c. 78. to the justices of the peace, to widen, divert, and change highways, as they shall judge most convenient.

In order to which, it is enacted, That the surveyor shall make every public cartway leading to any market town 20 feet wide at the least, and every public horse way or drift way 8 feet wide at the least, if the ground between the fences inclosing the same will admit thereof. And where it shall appear, upon the view of two justices, that any highway between the fences thereof is not of sufficient breadth, and may be conveniently widened and enlarged; or that the same cannot be conveniently enlarged and made commodious for travellers, without diverting and turning the same: the said justices shall order (M) such highway respectively to be widened and enlarged, or diverted and turned, in such manner as they shall think fit; so that the said highway when enlarged and diverted shall not exceed 30 feet in breadth; and that neither of the said powers do extend to pull down any house or building, or to take away the ground of any garden, park, paddock, court, or yard. s. 15, 16.

And for satisfaction of the person or persons, bodies politic or corporate, who are seised or possessed of or interested, in their own right, or in trust for any other, in the ground that shall be laid into the said highway so to be enlarged, or thro' which the said highway so to be diverted and turned shall go; the said surveyor, under the direction and with the approbation of the said justices, shall make an agreement with them for the recompence to be made for such ground, and for the making such new ditches and fences as shall be necessary, in proportion to their several interests; and also with any other person, body politic or corporate, that may be injured by the enlarging or diverting such highway as aforesaid. And if the said surveyor cannot agree with them, or if they cannot be found, or shall refuse to treat or to take such recompence as shall be offered by the surveyor; then the justices, at any general quarter sessions, upon certificate in writing (N) signed by the justices who made such view, of their proceedings in the premises, and on proof of 14 days notice in writing having been given by the surveyor to the owner, occupier, or other person or body corporate interested in such ground, or to his or their guardian, trustee, clerk, or agent, signifying an intention to apply to such quarter sessions for the purposes of taking such ground, shall impanel a jury out of the persons returned to serve at such sessions: And the said jury shall upon their oaths, assess the damages to be given and recompence to be made to the owners and others interested in the said grounds, as they shall think reasonable, not exceeding 40 years purchase for the clear yearly value of the ground; and likewise such recompence as they shall think reasonable, for making new ditches and fences on the side or sides of the said highways that shall be so enlarged or diverted; and also satisfaction to any person or body corporate that may be otherwise injured by the enlarging or diverting the said highways respectively. *f. 16.*

And if the jury shall give a verdict for more money than was offered by the surveyor before the application to the sessions; the costs attending the several proceedings shall be paid by the surveyor, out of the money in his hands or by him to be levied: But if the jury shall give a verdict for no more, or for less than was offered by the surveyor; then the costs shall be paid by the person or body corporate, who refused to accept the satisfaction so offered to him as aforesaid. *f. 18.*

And

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And on payment or tender of the money so to be awarded, or leaving it in the hands of the clerk of the peace if the party intitled to receive it cannot be found or shall refuse to accept it; the interest of such person or body corporate in the said ground shall be divested out of them, and the said ground, after such agreement or verdict as aforesaid, shall be esteemed and taken to be a public highway, to all intents and purposes. *f. 16.*

Saving nevertheless, to the owner of such ground, all mines, minerals, and fossils lying under the same, which may be got without breaking the surface; and also all timber and wood growing upon such ground, to be cut down and taken by such owner, within one month after such order made; or in default thereof, to be cut down by the surveyor within the respective months aforesaid, and laid upon the land adjoining for the benefit of the owner. *Id.*

And where there is not sufficient money in the hands of the surveyor, the said two justices in case of agreement, or the said quarter sessions after such verdict as aforesaid, shall order an equal assessment to be made and levied upon all and every the occupiers of lands, tenements, woods, tithes, and hereditaments, in the parish, township, or place where such highway lies; and if not paid in ten days after demand, the same shall by order of the said two justices or court of quarter sessions respectively, be levied by the surveyor in the manner herein after mentioned. Provided, that no such assessment to be made in any one year shall exceed 6d in the pound of the yearly value of the lands, tenements, woods, tithes, and hereditaments so assessed. *Id.*

And when any such new highway shall be made as aforesaid, the old way shall be stopped up, and the land and soil thereof shall be sold by the surveyor, with the approbation of the said justices (O), to some person whose lands adjoin thereto, if he shall be willing to purchase the same; if not, to some other person, for the full value thereof. But if such old road shall lead to any lands, house, or place, which cannot in the opinion of such justices respectively be accommodated with a convenient way and passage from such new highway; in such case, the old highway shall only be sold subject to the right of way and passage to such lands, house, or place respectively. And the money arising by the sale shall be applied towards the purchase of the land where such new highway shall be made. And on payment or tender of the money,

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and on a certificate signed by the said two justices, or by the chairman of the said court of quarter sessions respectively, describing the lands so sold, and expressing the sum so agreed for, and directing to whom the same shall be paid; and on the purchaser's taking a receipt for such purchase money from the person intitled to receive the same, by an indorsement on the back of such certificate, the soil of such old highway shall become vested in such purchaser and his heirs. But all mines, minerals, and fossils, lying under the same, shall continue to be the property of the person who would have been intitled to the same, if such old highway had continued there. *f. 17.*

And moreover, when it shall appear, upon the view of two justices (P) that any public highway, not in the situation herein before described, or public bridle way, or footway, may be diverted, so as to make the same nearer or more commodious to the public, and the owner of the lands thro' which such new highway, bridle way, or footway, is proposed to be made, shall consent thereto by writing (Q) under his hand and seal; it shall be lawful, by order of the justices at some special sessions, to divert and turn and to stop up such footway, and to divert, turn, and stop up and inclose, sell and dispose of such old highway or bridle way, and to purchase the ground and soil for such new highway, bridle way, or footway, by such ways and means, and subject to such exceptions and conditions in all respects, as herein before mentioned with regard to highways to be widened or diverted. And where any such highway, bridle way, or footway, herein last before described, shall be so ordered to be stopped up or inclosed, and such new highway, bridle way, or footway set out and appropriated in lieu thereof as aforesaid; it shall be lawful for any person injured or aggrieved by any such order or proceeding, or by the inclosure of any highway by virtue of an inquisition taken upon a writ of *Ad quod damnum*, to appeal to the next general quarter sessions, on giving ten days notice in writing to the surveyor and party interested in such inclosure, if there be time for that purpose; if not, then to the next sessions after. And if no such appeal be made, or, being made, such order and proceedings shall be confirmed, the new way shall be and continue a public highway, bridle way, or footway, to all intents and purposes, and the soil thereof sold in the manner and subject to the restrictions herein before mentioned with respect to highways to be enlarged or diverted. But no inclosure

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on stoppage of such old way shall be made, until the new way shall be completed; and so certified by two justices upon view; which certificate shall be returned to the clerk of the peace; and by him enrolled amongst the records. *§. 19.*

And where any highway, bridle way, or footway, hath been diverted and turned above 12 months, either from necessity, or where the same hath been destroyed by floods, or slips of the ground, or from other causes, if a new way hath been made in lieu thereof, nearer or more commodious to the public, and the same hath been acquiesced in, and no suit or prosecution hath been commenced for the diverting or turning the same; such new way shall from henceforth be the public way to all intents and purposes whatsoever. *§. 19.*

Provided, that no common land, lying between the fences of any old highway to be stopped up or inclosed by virtue of this act, shall be inclosed. And where the same not being common land, shall upon a medium exceed 30 feet in breadth, and not extend to 50 feet, the same shall not be stopped up or inclosed, until satisfaction be made to the owner for so much as shall exceed the breadth of 30 feet; and if the parties cannot agree, the same shall be adjusted by the said justices, or the jury, if a jury be impanelled: And if it shall exceed 50 feet in breadth, or if the old road be thro' the open field or ground belonging to any particular person; such person, and also the person or persons intitled to the land between the fences on the side of such highway, shall respectively hold and enjoy the land and soil of such old highway, and pay to the surveyor so much as shall be agreed on, or if they cannot agree, then so much as shall be adjudged by the said justices or jury, if a jury be impanelled, to be adequate to the purchase, estimating such highway as 30 feet in breadth upon an average. *§. 20.*

And where any footway shall be diverted thro' the land belonging to the same person who owned the land thro' which such old footway lay, the same shall be deemed an exchange only; and no satisfaction shall be made, unless the land for the new footway be of greater length and of greater value; than the land used for the old footway. And where the footway shall not be turned thro' the land belonging to the same person, the damage which had been occasioned by the old footway to the lands thro' which it lay, if the parties interested shall not agree in adjusting the same, shall be adjudged by two indifferent persons

to be named by the owner of the land, and the other by the said two justices; and if the persons so to be nominated cannot agree therein, they shall chuse some third person to adjudge the same, whose determination shall be final. And the money at which such damages shall be assessed, shall be applied in making satisfaction to the owner of the land, thro' which such new footway shall be made. *21.*

And if in any parish or place, where a highway shall be diverted and turned, it shall appear to the justices, that there are other highways within such parish or place, besides that so to be diverted and turned, which may without inconvenience to the public be diverted into such new highway, or into any other within the same parish or place, and the charge of repairing the same may be thereby saved; the said justices may order such highway, which shall appear to them unnecessary, to be stopped up, and the soil thereof sold, in such manner, and subject to such restrictions, and such right of appeal, as herein before directed concerning highways to be stopped up or inclosed.

XII. Assessments how to be made.

For reimbursing expences for purchasing materials, and making satisfaction for damages in getting and carrying the same away;—erecting guide posts, or other posts or stones;—making and repairing trunks, tunnels, plats, bridges, and arches;—for damages done to lands by making new ditches and drains;—and for the salary to be paid by the parish, township, or place to the surveyor: upon application by the surveyor to the justices at annual sessions, and oath made of the sums he hath bona fide laid out, or which will be required for the purposes aforesaid; the said justices, or two of them, shall by their warrant cause an equal assessment to be made, upon all owners of lands, tenements, woods, tithes, and hereditaments, to be made and collected by such person or persons, and allowed in such manner, as the said justices in their order at such sessions shall appoint; and to be levied as is herein after directed *13 G. 3. c. 78. s. 30.* Provided, that no such assessment for those or any other purposes, in any one year, shall exceed the rate of 16d. in the pound.

If upon application of the surveyor to the justices at general or quarter sessions, or at a special sessions for

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the highways, the said justices shall be fully satisfied by proof upon oath, that the duty hath been performed, and the money applied according to the directions of this act; or shall be fully satisfied, that the common highways, bridges, causeways, streets, or pavements, belonging to any parish, township, or place, are so far out of order, that they cannot be sufficiently amended and supported by the means herein before prescribed (notice being first given (R) of such intended application at the church or chapel on some Sunday preceding such quarter or special sessions; or, if the place be extraparochial, notice in writing being first given of such intended application, to some of the principal inhabitants residing in such extraparochial place, a week at least before such general or special sessions);—in such case, an equal assessment upon all and every the occupiers of lands, tenements, woods, tithes, and hereditaments within any such parish, township, or place, for the said purposes, may be made and collected by such person, as shall be allowed in such manner, as the said justices by their order (S) at such general or special sessions shall direct. 13 G. 2. c. 78. s. 45.

Provided, that the said assessment, and the assessment herein before authorized for buying materials, making satisfaction for damages, erecting guide posts, and paying the surveyor's salary, shall not together in any one year exceed the rate of 9 d in the pound. s. 46.

XIII. Penalty of binding the execution.

If any person shall resist or make forcible opposition against any person employed in the execution of this act, or make any rescue of the goods distrained; or if any constable shall refuse or neglect to execute or obey any warrant of a justice; he shall, on conviction before one justice, forfeit not exceeding 10 l, nor less than 40 s to be paid to the surveyor for the repair of the highways. If not forthwith paid or secured to be paid upon conviction, the justice shall commit him to the common gaol or house of correction for any time not exceeding six months, unless the forfeiture be sooner paid. 13 G. 2. c. 78. s. 71.

XIV. Penalty of the surveyor for neglect of duty.

If any surveyor, after his acceptance of the office, shall neglect his duty in any thing required of him, which

which no particular penalty is imposed ; he shall forfeit not exceeding 5 l, nor less than 10 s, at the discretion of the justice or justices having jurisdiction therein. 13 G. 3. c. 78. s. 50.

XV. Surveyor's account.

The surveyor shall diligently collect the several assessments, forfeitures, penalties, sums of money, and compositions, within the year for which he is appointed surveyor :

And shall keep a book, in which he shall enter a just and true account of all such money as shall have come to his hands, or to the hands of the said assistant, and to whom, and on what occasion, he hath paid or applied the same :

And shall also enter in such a book a list of all such sums of money as shall then remain due and owing from any person or persons, in respect of the payments, compositions, assessments, penalties, or forfeitures :

And also an account of all tools, materials, implements, and other things provided by order of the inhabitants, at a vestry or other public meeting, for the repair of the highways, at the public expence of such parish, township, or place :

And shall produce the book and the assessments made in that year, to the inhabitants at a vestry or other public meeting to be held for that purpose, within 15 days before the special sessions to be holden in the week next after Michaelmas quarter sessions ; to the intent that the said accounts, assessments, and lists may be inspected by the said inhabitants :

And after the said book and assessments shall have been produced at such meeting, he shall take the same to a justice on such day and at such hour as shall be agreed upon at such meeting before such last mentioned special sessions ; and then and there verify such account, or any part thereof, upon oath (T), if required :

And such justice may allow such account (U), if he finds it just, or postpone it until such special sessions, if he finds cause for so doing, in which case it may be settled and allowed at such special sessions, after the parts objected to by such justice shall have been explained and verified by proper evidence, to the satisfaction of the justices at such special sessions ; and in case

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any articles contained in such accounts shall not be explained and proved to the satisfaction of such justices, they may disallow the same :

And for the account examined and taken, and oath be administred, the justices clerks shall have the sum of 1s, and no more. 13 G. 3. c. 78. s. 48.

And when the said accounts shall have been so settled and allowed, or disallowed as aforesaid ; the said book and assessments shall be transmitted to a churchwarden or overseer of the poor of such parish, township, or place, or if the place be extraparochial, then to some principal inhabitant thereof ; to be kept for the use of such parish, township, or place : And the said surveyor shall also forthwith deliver a duplicate of such book and account, together with all sums of money that shall remain in his hands, and likewise all tools, materials, implements, and other things as aforesaid to the succeeding surveyor, if any shall be appointed ; or retain the same in his hands, and account for them in his next account, if he shall be continued surveyor in the succeeding year. *Id.*

And the succeeding surveyor may recover, collect, and receive all sums of money due and owing as aforesaid, as the preceding surveyor could or ought to have done. *Id.*

And if such surveyor shall neglect to provide such book, or to enter such accounts and lists therein ; or to deliver the said book and such duplicate thereof, and such assessments, tools, materials, implements, and other things, in manner aforesaid ; he shall forfeit not exceeding 5l, nor less than 40s. And if he shall make default in paying or accounting for the money remaining in his hands, within the time, and according to the directions aforesaid ; he shall forfeit double the money which shall be adjudged by the said justices to be in his hands. *Id.*

If the surveyor shall die, before such accounts and lists be made out ; or such money, book, assessments, tools, materials, and implements shall be so delivered and paid ; his executors or administrators shall make out, pay, and deliver the same, in like manner, and under the like penalty, as the surveyor was liable and subject to. *Id.*

XVI. Presentment or indictment of highways in general. (V.)

Ind. Presentment to be shown the county.

1. All defects of repairs of highways shall be presented in the county where they lie, and not elsewhere.

2. And

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2. And the indictment must shew, that the way is common, to all the king's people; for which cause it hath been resolved, that an indictment for a nuisance to a highway, without adding that it is a highway, is naught. *1 Haw. 220.* Must shew it to be a highway.

But it is not necessary to say it is a highway for this or that particular carriage; for if it is a common highway, it is a highway for all manner of things. *Cases in the time of lord Hardwicke. 316.*

3. It is safest in the indictment to shew both the place from which, and also the place to which the way supposed to be out of repair doth lead; yet exceptions for want of such certainty have sometimes been disallowed: However it seems certain, that there is no necessity to shew that a highway leads to a market town, because every highway leads from town to town. *1 Haw. 219.* Must shew the places from and to which it leads.

4. It is necessary in the indictment expressly to shew, in what place the nuisance complained of was done; for which cause an indictment for stopping a way at *D.* leading from *D.* to *C.* is not good, for it is impossible that a way leading from *D.* should be in *D.* and no other place is mentioned. *1 Haw. 219.* Place where.

5. It is said, that a presentment that a highway in such a place is decayed, by the defaults of the inhabitants of such a town, is good, without naming any person in certainty. *1 Haw. 220.* Need not name the inhabitants.

6. But it hath been adjudged, that an indictment against particular persons must specially charge them every one. *1 Haw. 220.* Indictment against particular persons.

7. It ought also certainly to shew, to what part of the highway the nuisance did extend, as by shewing how many foot in breadth it contained, or otherwise the defendant will neither know the certainty of the charge, against which he is to make his defence, neither will the court be able from the record to judge of the greatness of the offence, in order to assess a fine answerable thereunto; and it hath been resolved, that the place is not sufficiently ascertained by shewing, that it contained so many foot in length, and so many in breadth, by estimation. *1 Haw. 220.* Must set forth how much is out of repair.

8. Also, the fact must be expressed in such proper terms, that it may clearly appear to the court to have been a nuisance; and for this cause it hath been resolved, that a presentment for diverting a highway is not good, because a highway cannot be diverted, but must always continue in the same place where it was, howsoever it may be ob-

struck, and a new way made in another place. 1 *Haw.* 220.

Persons indicted
to have notice.

9. It seems to be implied in the construction of all penal statutes, that no one ought to be convicted of any offence against them without having notice of the accusation made against him, and an opportunity of defending himself. And therefore it seems certain, that generally no one ought to be punished for any of the abovementioned offences, without being called upon to answer for himself, and having liberty to traverse the matters alledged against him. 1 *Haw.* 219.

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10. Upon an indictment against a parish for not repairing, they can give nothing in evidence upon the plea of not guilty, but that the way is in repair; but if it be against a particular person, he may give evidence that others ought to repair it. 1 *Mod.* 112. *Comb.* 396.

And the defendants ought not to plead that they ought not to repair, without shewing who ought. 1 *Haw.* 220.

And Mr. *Hawkins* says, that if a particular person be bound to repair a highway, either by inclosure or by prescription, the parish cannot take advantage of it upon the plea of not guilty, but ought to set forth their discharge in a special plea. 1 *Haw.* 203.

And it is no excuse for the inhabitants of a parish, being indicted at common law, for not repairing the highways, that they have done all that is required of them by statute; for since these statutes are wholly in the affirmative, and made in aid of the common law, and to supply the defects thereof, they shall not be construed to abrogate any provision thereby made for these purposes. 1 *Haw.* 204. So that at all events, the parish may be compelled to make their ways good.

Exceptions.

11. After conviction, or upon a demurrer, or confession, any one may take exceptions to such indictment or presentment in any court for the want of legal form; but the court in discretion will very rarely suffer a man to take such exceptions, before such conviction or confession, without a certificate and affidavit that the ways are in good repair. 1 *Haw.* 219.

Fine.

12. And the defendants shall not be discharged by submitting to a fine, but a *distingas* shall go in *infinitum* till they repair. 1 *Haw.* 220.

Inhabitants at a
meeting may
agree to prosecute
an indictment.

13. If the inhabitants of any parish, township, or place, shall agree at a vestry or other public meeting, to prosecute any person by indictment for not repairing any highway

highway within such parish, township, or place, which they apprehend such person was obliged to by law, or for committing any nuisance upon any highway; or shall agree at such vestry meeting to defend any indictment or presentment against them; the surveyor may charge in his account the reasonable expences thereof, after the same shall have been agreed to by such inhabitants at a vestry or public meeting, or allowed by a justice within the limit where such highway shall be. 13 G. 3. c. 78. f. 65.

14. And in all cases where a vestry or other public meeting of the inhabitants of any parish, township, or place, is directed by this act; public notice shall be given of the day, hour, and place of holding the same, at the church or chapel on the Sunday next before; and also notice thereof in writing (W), specifying the purpose of such meeting, shall be fixed at the same time upon the door of such church or chapel: and the same shall not be held till 3 days at least after such notice given. And if there be no church or chapel, the like notice shall be given in writings, and put up at the most public place therein, 3 days at least before such meeting. 13 G. 3. c. 78. f. 66.

Meetings for the like purposes how to be ascertained.

15. The court before whom any indictment or presentment shall be tried for not repairing highways, may award costs to the prosecutor, to be paid by the person indicted or presented, if it shall appear that the defence was frivolous; or costs to the person indicted or presented, to be paid by the prosecutor, if it shall appear that the prosecution was vexatious. 13 G. 3. c. 78. f. 64.

Costs on an indictment.

XVII. Presentment by a justice.

Every justice of assize, justices of the counties palatine of Chester, Lancaster, and Durham, and of the Great sessions in Wales, shall have authority upon their own view, and every justice of the peace either upon his own view or upon information on oath given to him by the surveyor, to make presentment (X) at their respective assizes or Great sessions, or in the open general quarter sessions of the peace, of any highway, causeway, or bridge, not well and sufficiently repaired and amended, or of any other default or offence committed and done contrary to the provision and intent of this statute:

And all defects in the repair thereof shall be presented in the jurisdiction where the same do lie, and not elsewhere:

And

Highways in general.

And every such presentment shall be as effectual, as if found by the oaths of twelve men: Saving to every person affected by such presentment his lawful traverse to the same, as well with respect to the fact of non-repair, as to the duty or obligation of repairing the said highways, as they might have had upon any indictment of the same presented and found by a grand jury:

And the justices at their general quarter sessions, or the major part of them, may, if they see just cause, direct the prosecution on such presentment as shall be made at the quarter sessions, to be carried on at the general expense of such limit, and to be paid out of the general rates within the same:

And for every such default so presented, the justices of assize, counties palatine, and great sessions, and justices of the peace, at their respective courts, may assess such fines as they shall think meet:

And no such presentment, nor any indictment for any such default or offence, shall be removed by Certiorari or otherwise, out of such jurisdiction, till the same be traversed and judgment thereupon given; except where the duty or obligation of repairing may come in question. 13 G. 3. c. 78. f. 24.

XVIII. Levying of assessments, fines, and forfeitures.

Levying of assessments.

If any person shall refuse or neglect to pay the sum assessed upon him by any assessment in pursuance of this act, within ten days after demand thereof made; the same shall be levied by the surveyor or any other person, by warrant of one justice by distress (Y); and in default of distress, the justice may commit him (g.) to the common gaol, there to remain until he shall have paid the sum so assessed, and the costs and charges occasioned by such neglect or refusal. 13 G. 3. c. 78. f. 67. And the surveyor may in all cases be a witness, notwithstanding his salary may arise in part from the forfeitures and penalties. f. 68.

Fines.

2. No fine, issue, penalty, or forfeiture, for not repairing highways, or not appearing to any indictment or presentment for not repairing the same, shall be returned into the exchequer or other court, but shall be levied by and paid to such person or persons, residing in or near the parish, township or place where the road shall lie, as the court

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court imposing the same shall order, to be applied towards the repair of the highways. And the person or persons so ordered to receive such fine, shall apply, and account for the same, according to the direction of such court, or in default thereof shall forfeit double the sum received.

13 G. 3. c. 78. s. 47.

And if any fine, issue, penalty, or forfeiture, for not repairing the highways, or not appearing as aforesaid, shall be levied on one or more of the inhabitants; such inhabitant may make his complaint to the special sessions; and the justices there shall by their warrant cause a rate to be made, according to the form and manner herein before prescribed for reimbursing such inhabitant. Which rate so made, and confirmed by two justices, shall be collected and levied by the surveyor; who shall within one month after making and confirming the rate, collect, levy, and pay to such inhabitant the money so levied as aforesaid. *Id.*

3. All penalties and forfeitures by this act imposed Forfeitures.

for any offence against the same, and all costs and charges to be allowed and ordered by the authority of this act (the manner of levying and recovering whereof is not hereby otherwise particularly directed) shall be levied by distress, by warrant of one justice, where the offence, neglect, or default shall happen, or such order for payment of costs or charges shall be made (a. b. c. d. e.) which warrant such justice shall grant, on conviction of the offender by confession, or the oath of one witness, or upon order made as aforesaid. And the penalty, when levied, shall be paid half to the informer, and half to the surveyor, for the repair of the highways, unless otherwise directed by this act. But if the surveyor shall be the informer, then the whole shall be employed towards the repair of the highway. And if such distress cannot be found (f.); and such penalties and forfeitures, or the said costs and charges, shall not be forthwith paid; the justice shall commit him (g.) to the common gaol or house of correction, for any time not exceeding 3 months, unless the penalty, forfeiture, costs, and charges be sooner paid.

13 G. 3. c. 78. s. 72.

And if the offender live out of the jurisdiction of the said justice, any justice of the limit where such person shall inhabit, on request to him made, and on a true copy of the conviction and of the order for payment of such costs and charges being produced and proved before him by one witness upon oath, shall by his warrant cause the

penalty

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penalty or forfeiture mentioned in such conviction, and the costs and charges mentioned in such order, or so much thereof as shall not have been paid, to be levied by distress; and if no sufficient distress can be had, shall commit him to the common gaol or house of correction of such limit, for the time and in the manner aforesaid. *Id.*

Provided, that no warrant of distress, unless otherwise directed by this act, shall be issued for the levying any penalty or forfeiture, costs or charges, until six days after the offender shall have been convicted, and an order made and served upon him for payment thereof. *f. 73.*

Provided also, that the prosecutor or informer may, at his election, sue for and recover any forfeiture or penalty imposed by this act, which shall amount to 40s or upwards (if the recovery thereof be not otherwise particularly directed by this act) either in the manner herein before directed, or by action of debt in any of his majesty's courts of record, in which it shall be sufficient to declare, that the defendant is indebted to the plaintiff in the sum of ——— being forfeited by an act passed in the 13th year of the reign of his present majesty, intituled, "An act to explain, amend, and reduce into one act of parliament, the statutes now in being for the amendment and preservation of the publick highways within that part of Great Britain called England, and for other purposes;" and the plaintiff, if he recovers, shall have double costs. *f. 74.*

Provided, that there shall be no more than one recovery for the same offence; and that ten days notice in writing be given to the party offending previous to the commencement of such action; and that the same be brought within one calendar month after the offence committed. *f. 75.*

And no conviction shall be had, unless upon confession or oath of one witness, or view of the justice. *f. 76.*

And any inhabitant, where the offence shall be committed may be a witness, notwithstanding his being an inhabitant of such parish, township, or place. *Id.*

And any justice may administer an oath to any witness or other person, for the better discovery and execution of the several matters or things herein directed to be inquired into and performed. *f. 77.*

4. Where any distress shall be made for any sum to be levied by virtue of this act, the distress shall not be deemed unlawful, nor the party making the same be deemed

ed a trespasser, on account of any default or want of form in the proceedings; nor shall the party distraining be deemed a trespasser *ab initio* on account of any irregularity which shall be afterwards done by the party distraining, but the person aggrieved by such irregularity may recover full satisfaction for the special damage in an action on the case. 13 G. 3. c. 78. s. 78.

And no person shall recover in any action for any irregularity, trespass, or wrongful proceedings, if tender of sufficient amends shall be made before the action brought; and if no tender hath been made, the defendant, by leave, may pay into court such sum as he shall see fit, whereupon such proceedings shall be had as in other actions where the defendant is allowed to pay money into court.

s. 79.

And no proceedings on this act shall be quashed for want of form, or removed by Certiorari or any other process into any of his majesty's courts of record at Westminster. s. 80.

XIX. Appeal.

If any person shall think himself aggrieved by any thing done by any justice or other person in the execution of this act, and for which no particular method of relief is herein otherwise appointed, he may appeal to the general quarter sessions, giving notice in writing (h.) of his intention to bring such appeal, and of the matter thereof, to the justice or other person against whom the complaint shall be made, within six days after the cause of such complaint shall arise; and within 4 days after such notice, entering into recognizance before a justice, with one sufficient surety, conditioned to try such appeal at, and abide the order of, and pay such costs as shall be awarded by the justices at such quarter sessions. 13 G. 3. c. 78. s. 80.

And such justice and other person, having received such notice, shall return all proceedings had before them, touching the matter of such appeal, to the said general quarter sessions; on pain of 5*l.* *Id.*

And the justices at such sessions, on proof of such notice given, and of the entering into such recognizance, shall determine the appeal in a summary way, and award costs to either party, to be levied and recovered as herein before directed. *Id.*

Provided,

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Provided, that no appeal shall be made against any conviction for a penalty or forfeiture, unless the person convicted shall at the time of such conviction if he be then present, if not, within 6 days after, give notice of his intention to appeal, and at the same time enter into recognizance with sufficient sureties to pay such penalty or forfeiture, in case the conviction be affirmed upon the appeal: And on his giving such security, the further proceeding for such penalty or forfeiture shall be suspended until the appeal be heard and determined. *Id.*

XX. Limitation of actions.

If any action shall be commenced for any thing done in the execution of this act, the same shall be brought within three months, and within the county where the fact was committed, and the defendant may plead the general issue; and if he prevails in the action, he shall have treble costs. 13 G. 3. c. 78. s. 81.

Highways, turnpike

II. Concerning turnpike roads in particular.

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- X. *Driver misbehaving.*
- XI. *Power of the general highway acts transferred to turnpike roads.*
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- XIX. *Penalty of obstructing the execution hereof.*
- XX. *Levy and application of forfeitures.*
- XXI. *Irregularity in the proceedings.*
- XXII. *Appeal.*
- XXIII. *Limitation of actions.*

I. General qualification of trustees.

IN many of the acts for repairing turnpike roads, there is a clause ascertaining the quantity of estate which a man shall be possessed of, in order to intitle him to act as a trustee in the execution of such act: And by the 13 G. 3. c. 84. Where no such qualification is directed by any such particular act, it is generally provided, that in such case, no person shall be capable of acting as a trustee in the execution of any such act, unless he shall be in his own right or in the right of his wife, in the actual possession or receipt of the rents and profits of lands, tenements, or hereditaments, of the clear yearly value of 40l; or possessed of or intitled to a personal estate to the value of 800l; or heir apparent of a person possessed of an estate in land of the clear yearly value of 80l; and unless, before he acts (not being such heir apparent) he take and subscribe the following oath before two trustees: "I A. B. do swear that I truly and bona fide am in my own right [or, in the right of my wife] in the actual possession and enjoyment, or receipt of the rents and profits of lands, tenements, or hereditaments, of the clear yearly

yearly value of forty pounds; [or, possessed of, or intitled to, a personal estate to the value of eight hundred pounds, as the case may be:] *So help me God.*" And if he shall act contrary hereto, he shall forfeit 50 l to him who shall sue: And the proof of the qualification shall lie on the person prosecuted. *f. 44.*

II. Officers in general.

Officers not to
be alehouse
keepers.

1. No person keeping a victualling house, alehouse, or other house of public entertainment, or who shall sell any wine, cyder, beer, ale, spirituous or other strong liquors, by retail, shall be capable of acting as trustee, or of holding any place of trust or profit under the trustees, or of collecting the tolls; but no such person shall be precluded from farming such tolls, provided he employs a person to collect them who shall not be under such incapacity. *13 G. 3. c. 84. f. 46.*

Treasurer and
surveyor to give
bond.

2. Every treasurer and surveyor shall, within one month after his appointment, give bond (without stamp) to the trustees, with a sufficient surety, in such penalty as the trustees at a meeting shall direct, duly to pay and account for all such money which shall be then in his hands, or which he shall afterwards receive as treasurer or surveyor. *13 G. 3. c. 84. f. 65.*

Gatekeeper.

3. No gatekeeper, or person renting the tolls, and residing in the toll house, shall be removable by any order of two justices as to his settlement, unless he shall be actually chargeable; nor shall he gain a settlement by such renting and residence in the parish or place where the toll house is situate: And no tolls or toll house shall be assessed towards the poor rate, or any other public or parochial levy. *13 G. 3. c. 84. f. 56.*

And if any gatekeeper shall suffer any waggon, wain, cart, or other carriage to pass thro' the gate, or to be drawn or pass within his view or with his knowledge, with any greater number of horses or beasts of draught; or with any carriage constructed or drawn in any other manner, or without such names and descriptions painted thereon, as are in this act directed; and shall not within one week proceed for the recovery of the forfeitures; he shall forfeit 40 s. *f. 57.*

And the gatekeeper, and also the surveyor, shall, when required by notice in writing from the trustees or any five of them, render upon oath, to be administered by a trustee,

an account in writing of all money received by them on account of the road, and not before accounted for; on pain of 5 l., to be recovered in a summary manner before one justice, and applied to the use of the road. *f. 55.*

Upon the death of a gatekeeper, two trustees may appoint another till the next meeting. *f. 54.*

And if the wife or family of a gatekeeper who shall die, shall refuse to deliver up possession within four days after another shall be appointed; or if a gatekeeper shall be discharged from his office, and shall refuse to deliver up possession within two days after notice given to him of his discharge; one justice may by his warrant order the constable, with such assistance as shall be necessary, to enter the house and premises in the day time, and remove the persons who shall be found therein, together with their goods, out of such house, and put the new appointed officer in possession. *Id.*

4. All clerks, treasurers, surveyors, and other officers, and their respective executors and administrators, shall within ten days after notice in writing given to them by the trustees, or five of them, at a meeting, produce and deliver up all books, accounts, papers, or writings, relative to the execution of their offices; on pain of 20 l.

Officers to account.

13 G. 3. c. 84. *f. 45.*

5. Every constable refusing or neglecting to put this act in execution, or to account for and deliver any forfeiture or penalty; and every surveyor, toll taker, and all persons employed by the trustees, who receive salaries,—that shall neglect, for the space of one week after an offence committed, to lay such information on oath before a justice as by this act is directed; shall forfeit 10 l.

General penalty on officers not doing their duty.

13 G. 3. c. 84. *f. 73.*

III. Meetings.

1. Where a sufficient number of trustees shall not meet on the day appointed; so many of them as do meet, or if none shall be present, the clerk shall cause ten days notice in writing to be affixed on all the toll gates erected on the said road; or if none shall be then erected, in the most conspicuous place in one of the principal towns nearest to which the roads lie (and in such case also in some public news paper circulated in that country); appointing the trustees to meet at such place where the preceding meeting was appointed to have been held. 13 G. 3. c. 84. *f. 49.*

Meetings how to be sustained.

Hours of business,

Orders to be signed,

And no meeting shall be adjourned for longer time than three calendar months. *f. 50.*

2. And no business shall be proceeded on at a meeting before the hour of ten in the forenoon; and no adjournment shall be made to any hour later than two in the afternoon of the day on which such meeting shall be appointed to be held. *13 G. 3. c. 84. f. 50.*

3. And every act agreed upon at any meeting shall be signed at the said meeting by a competent number of trustees; otherwise the same shall be void. *13 G. 3. c. 84. f. 50.*

IV. Payment of subscriptions enforced.

If any person shall agree to advance any sum for making or repairing any turnpike road, and shall subscribe his name to any writing for that purpose; he shall be liable to pay the same accordingly: and in default of payment within 21 days after the same shall become payable according to the purport of such writing, and shall be demanded by the person to whom the same is made payable by such writing, or if no person be named therein, then by the treasurer of the turnpike; such treasurer or other person may sue for and recover the same. *13 G. 3. c. 84. f. 35.*

V. Weighing engines to be erected, with additional toll for over-weight.

Weighing engines to be erected.]

1. The trustees, or five of them, at a meeting, may if they think proper, at any toll gate, or in any part of the road, cause a crane, machine, or engine to be erected for the weighing of carts, waggons, or carriages, conveying any goods or merchandise whatsoever; and by writing signed by them may cause such carriage to be weighed, together with the loading thereof. (I) *13 G. 3. c. 84. f. 1.*

Additional toll for over-weight.

2. And may take, over and above the other tolls, an additional toll, the sum of 20 s for every hundred weight, or 112 lb to the hundred, which every such carriage with the loading thereof shall weigh, over and above the weight hereby allowed to them; *viz.*

To every waggon or four wheel carriage, having the fellies or rollers of the wheels of the breadth of 16 inches 8 tons in summer, and 7 in winter:

To every waggon or wain having the axle trees thereof of such different lengths, that the distance from wheel to wheel of the nearer pair of the said wheels be not more than 4 foot 2 inches, to be measured at the ground; and that the distance from wheel to wheel of the other pair thereof be such, that the fore and hind wheels shall roll only one single surface or path of 16 inches wide at the least, on each side of the said waggon or wain, and having the fellies thereof of the breadth of 9 inches from side to side at the bottom; 6 tons 10 hundred in summer, and 6 tons in winter:

To every waggon or 4 wheeled carriage, having the sole or bottom of the fellies of the wheels of the breadth of 9 inches; 6 tons in summer, and 5 tons 10 hundred in winter:

To every cart, having the fellies of 9 inches; 3 tons in summer, and 2 tons 15 hundred in winter:

To every waggon having the sole or bottom of the fellies of the wheels of the breadth of 6 inches; 4 tons 5 hundred in summer, and 3 tons 15 hundred in winter:

To every such waggon so constructed as to roll a surface of 11 inches; 5 tons ten hundred in summer, and 5 tons in winter:

To every cart having the fellies of the wheels of the same dimensions; 2 tons 12 hundred in summer, and 2 tons 7 hundred in winter:

To every waggon having the sole or bottom of the fellies of the wheels of less breadth than 6 inches; 3 tons 10 hundred in summer, and 3 tons in winter:

And to every cart having the fellies of the wheels of the same dimensions; 1 ton 10 hundred in summer, and 1 ton 7 hundred in winter:

And for the several purposes aforesaid, it shall be deemed summer from May 1. to Oct. 31; and winter from Nov. 1. to Apr. 30; both inclusive. 13 G. 3. c. 84.

Which said additional toll shall be as follows; viz. For the first and second hundred of such over-weight, the sum of 3d for each hundred:

For every hundred above two hundred, and not exceeding five hundred, the sum of 6d:

For every hundred above five hundred weight, and not exceeding ten hundred, the sum of 2s 6d:

For every hundred above ten hundred weight, and not exceeding fifteen hundred, the sum of 3s:

For every hundred above fifteen hundred, the sum of 20s.

D d 2

Provided,

Provided, that the trustees of the several turnpike roads within ten miles of London, Westminster, and Southwark, may lower these additional tolls as they shall think fit. 14 G. 3. c. 82.

Toll taker to weigh.

3. The toll gate keeper or other person appointed to the care of the weighing engine shall weigh all such waggons and carts as he shall have reason to believe carry greater weights than are allowed to pass without paying the additional toll: And if he shall permit such waggon or cart to pass thro' any such toll gate with greater weights than are hereby allowed, without weighing the same and receiving the additional tolls; he shall forfeit 5l. 13 G. 3. c. 84. f. 2.

And in order to detect any connivance or neglect of duty in the person so appointed to weigh the carriages, any trustee, creditor, clerk, treasurer, or surveyor of such turnpike road, may cause any carriage which shall have passed thro' the gate and not gone above 300 yards further to return and be weighed, paying to the driver the sum of 1 s; which sum shall be returned by the driver, if the carriage and loading be above the weight hereby allowed. f. 3.

And if the driver refuse to return, he shall forfeit 40 s; and any other person, being then present, may drive back such carriage in order to be weighed. f. 4.

And the surveyor shall make convenient places for turning such carriages within 300 yards of the gate, on each side thereof, if the ground will admit of it. 14.

List of names to be put up at the weighing engine.

4. And there shall be a list of the names of all the trustees and creditors, and also of the clerk, treasurer, and surveyor of such turnpike road, put up in the house or building where such weighing engine shall be placed, to be inspected by the owner or driver of every such carriage. 13 G. 3. c. 84. f. 4.

Acts continued to defray the expence of the engines.

5. In order to compensate for the expences of erecting such weighing engine, and to prevent any prejudice thereby to the creditors; all acts of parliament made for repairing turnpike roads, the trustees whereof shall within 12 months after the commencement of this act have caused such engine to be erected, shall be continued further for five years from the time of the expiration thereof. 13 G. 3. c. 84. f. 5.

Exemptions from weighing.

6. Provided, that the aforesaid regulations of weight shall not extend to any waggon, cart, or carriage, employed only in husbandry, or carrying only manure for land, hay, straw, fodder, or corn unthreshed. 13 G. 3. c. 84.

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c. 84. f. 6. Nor shall such carriages be weighed (except hay or straw carried for sale). 14 G. 3. c. 82.

7. And the justices in sessions, on complaint to them made, by any justice or two creditors or trustees, may cause such engines to be erected, and the expences thereof to be paid out of the tolls. 13 G. 3. c. 84. f. 7.

The sessions may cause engines to be erected.

8. Where two or more roads meet at or near the same place, the trustees of such roads respectively, at a meeting for that purpose, may fix upon some convenient place to erect a weighing engine upon, which will accommodate all such roads; and proportion the expences, and the money arising from forfeitures for over-weight, in such manner as they shall judge reasonable. 13 G. 3. c. 84. f. 8.

Engine where two roads meet.

9. The trustees shall cause to be put up and continued upon every toll gate, a table of all the tolls payable at every such gate, distinguishing each toll, and the different sorts of carriages for which they are to be paid; and also a table of the weights allowed for each carriage, with the loading thereof in summer and winter. 13 G. 3. c. 84. f. 66.

Table of the tolls to be put up at the gate.

VI. Breadth and tire of wheels.

1. Whereas by several acts of parliament for particular turnpike roads, several high tolls are granted for waggons, carts, and other carriages, drawn by more than a certain number of horses or beasts of draught, with intent, in effect, to prohibit the passage of such carriages, and thereby the better to preserve the roads; it is enacted, that the trustees of such road, or any five of them, at the first meeting after the commencement of this act, shall mitigate and reduce the same high tolls, in respect of such waggons or other wheel carriages only, having the wheels of the breadth of 6 inches, in such manner, as no greater toll in respect to waggons be taken for the same, than is directed by the said acts respectively to be taken for waggons and other four wheeled carriages drawn by 4 horses or beasts of draught; and that no greater toll be taken for carts having the fellies of their wheels of the breadth of 6 inches, than is directed by such acts to be taken for carts drawn by 3 horses. 13 G. 3. c. 84. f. 22.

Diminution of tolls in respect of broad wheels.

2. The turnpike trustees, or persons authorized by them, shall take for every waggon, wain, cart, or carriage,

Increase of tolls in respect of narrow wheels.

riage, having the fellies of the wheels of less breadth than 6 inches from side to side, at the bottom or sole thereof, and for the horses or beasts of draught drawing the same, one half more than the tolls payable for the same respectively; and after Sep. 29, 1776, double the said tolls. 13 G. 3. c. 84. s. 23.

And whereas there are in several turnpike acts, exemptions allowed from payment of tolls in particular cases, and liberties allowed in particular cases, to pay less than are charged upon other waggons, carts, or carriages, passing through turnpike gates; and whereas it will tend to the advantage and preservation of turnpike roads, to confine such exemptions and liberties to carriages with wheels of the breadth of 6 inches or upwards; it is enacted, that no person shall, by virtue of the said acts, have any benefit or advantage of any exemption from toll or part of toll, or to pay less in respect of any waggon, cart, or other carriage, or horse drawing the same, and carrying any particular kind of goods, than other carriages of the like nature carrying other goods ought to pay, unless such waggon, cart, or other carriage have the sole or bottom of the fellies of the wheels of the breadth of 6 inches or upwards: Except carts and carriages carrying corn in the straw, hay, straw, fodder, dung, lime for the improvement of land, or other manure, or any implements of husbandry. s. 24.

Exemptions in
respect of flat
wheels.

3. Provided, that no person shall have the benefit of any such exemption, or any privilege of compounding for tolls, in respect of any carriage having the fellies of the wheels of the breadth of 6 inches or upwards, unless the fellies, and the tire upon such fellies shall lie flat. 13 G. 3. c. 84. s. 9, 25.

Provided also, that all waggons, carts, or carriages, moving upon rollers, of the breadth of 16 inches on each side thereof, with flat surfaces, shall pass on any turnpike road toll free for (five years from Michaelmas 1774, 14 G. 3. c. 82.) and afterwards, paying only so much toll as shall not exceed half of the full toll payable for carriages having the fellies of the wheels of the breadth of 6 inches from side to side, and not rolling a surface of 16 inches on each side thereof: And that no more than half toll shall be paid in respect of waggons having the fellies of the wheels of the breadth of 9 inches, and rolling a surface of 16 inches on each side thereof, from and after the commencement of this act. s. 26.

And

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And after Sep. 29. 1776, the tire of the wheels of all waggons, wains, carts, and carriages, to be used upon any turnpike road, shall be countersunk in placing the same upon the fellies, in such manner that the nails shall not rise above the surface, and the sole or surface of the wheels shall be quite flat: And the owner of every such carriage offending therein shall forfeit 40 s; and the driver, not being the owner, 20 s. *f. 69.*

4. Provided always, that nothing herein contained shall extend to any chaise marine, coach, landau, berlin, chariot, chaise, chair, calash, or hearse; or to the carriage of such ammunition or artillery as shall be for his majesty's service; or to any cart or carriage drawn by one horse or two oxen and no more; or to any carriage having the sole or bottom of the fellies of the wheels of the breadth of 9 inches, which shall be laden with one block of stone, one piece of marble, one cable rope, one piece of metal, or one piece of timber. 13 G. 3. c. 84. *f. 27.*

General exceptions.

And no toll shall be paid at any turnpike gate, in respect of carriages solely employed in carrying materials for the repair of any turnpike road or public highway, or for going to or returning from such employment. *8 f. 60.*

VII. Number of horses or beasts of draught.

1. No waggon or other four wheeled carriage, having the sole or bottom of the fellies of the wheels of the breadth of 9 inches, shall pass on any turnpike road with more than 8 horses; nor any cart or other two wheeled carriage, having wheels of the breadth aforesaid, shall pass on any turnpike road with more than 5 horses: And the horses in such respective carriages shall draw in pairs (except an odd horse in any team, and except where the number of horses shall not exceed four):

Number of horses.

And no waggon or other four wheeled carriage, having the sole or bottom of the fellies of the wheels of the breadth of 6 inches, shall pass on any turnpike road with more than 6 horses; nor any cart or other two wheeled carriage, having wheels of the like breadth, shall pass on any turnpike road with more than 4 horses:

And no waggon or other four wheeled carriage, having the fellies of the wheels of less breadth than 6 inches, shall pass on any turnpike road with more than four horses; nor any cart or other two wheeled carriage, having the

fellies

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fellies of the wheels of less breadth than 6 inches, shall pass on any turnpike road with more than 3 horses :

On pain that the owner of every such carriage shall forfeit 5 l., and the driver (not being the owner) 20 s., to any person who shall sue for the same. 13 G. 3. c. 84. f. 13.

And for all the purposes of this act, two oxen or neat cattle shall be considered as one horse. f. 67.

Provided, that no prosecution shall be commenced before a justice by way of *information*, for any forfeiture incurred by the owner or driver of any carriage having a greater number of horses therein than are allowed by this act, unless such information be laid within 3 days after the offence committed ; and that no *action* shall be commenced, unless within one calendar month after the offence committed ; and that neither such information nor action shall be brought, unless notice be given by the informer to the driver on the day on which the offence shall be committed, of an intention to complain of such offence. And if it shall appear to the justice before whom such complaint shall be made, that the offender lives so remote as to make it inconvenient to summon him ; the justice may dismiss the complaint, and leave the informer to his remedy by action at law. f. 15.

And provided, that any waggon, cart, or other carriage may be drawn with any number of horses, upon any turnpike road where a weighing engine shall be erected, provided the carriage be weighed at such engine : And in case of a prosecution, the person having care of the engine shall on demand give the driver a ticket, certifying that such carriage was weighed, and the weight thereof, with the loading. f. 16.

Exception of
drawing up steep
hills.

2. If it shall appear to the trustees of any turnpike road, or any 7 of them, at a meeting, by the oath of one witness experienced in levelling, that any part of the rise of an hill upon such road shall be more than 4 inches in a yard ; they may allow (k.) such number of horses as they shall judge necessary, not exceeding 10 for waggons with 9 inch wheels, nor six for carts with 9 inch wheels ; and not exceeding 7 for waggons with 6 inch wheels, nor 5 for carts with 6 inch wheels ; and not exceeding 5 for waggons with wheels of less breadth than 6 inches, nor 4 for carts with wheels of less breadth than 6 inches :

And in case it shall appear that the whole rise of any hill taken together shall be more than 4 inches in a yard upon an average, they may allow such number of horses

as they shall think fit, for the purpose only of drawing up such hill; the length and extent of such hill to be specified in such order of allowance, and the termination at each end thereof to be marked by a post or stone; and the said order of allowance to be certified (1.) to the next sessions, who on proof upon oath may confirm or disallow the same; and the justices at any subsequent sessions may reconsider and discharge the same if they think fit. 13 G. 3. c. 84. f. 18.

3. And, if it shall appear, upon the oaths of credible witnesses, to the satisfaction of any justice or court authorized to enforce the execution of this act, that any carriage could not, by reason of deep snow or ice be drawn with the respective weights, and by the number of horses or beasts of draught hereby allowed; they may stop all proceedings before them for the recovery of any penalty or forfeiture for drawing with a greater number of horses or beasts of draught than are hereby allowed. 13 G. 3. c. 84. f. 19.

Exception of ice or snow.

4. Whereas great damage is done to turnpike roads by waggons and other carriages with narrow wheels drawn by horses in pairs; it shall not be lawful, for any waggon, wain, or cart, having the sole or bottom of the fellics of the wheels thereof of less breadth than 9 inches, to pass upon any turnpike road, if the same shall be drawn by horses in pairs: Except such, having the fellics of the breadth of six inches, as shall be authorized to be drawn in any other manner by order of the trustees at a meeting consisting of 7 or more; and except carriages drawn by two horses only. 13 G. 3. c. 84. f. 20.

Narrow wheeled carriages not to be drawn by horses in pairs.

5. And if any person shall drive with more than the number of horses hereby allowed; the constable, surveyor, or any other person, may apprehend and carry him before a justice, and upon conviction by confession or oath of one witness, he shall forfeit not exceeding 5 l. nor less than 10 s. 13 G. 3. c. 84. f. 21.

Apprehending offenders.

6. The justices in Wales, at their Michaelmas quarter sessions yearly, may license an increase of the number of horses in drawing carriages on any turnpike road, over and above the number herein before limited, if upon inquiry they find any additional number necessary; and may alter, vary, or revoke the same as they shall think fit. 13 G. 3. c. 84. f. 59.

Exception as to Wales.

VIII. *Penalty of evading the tolls.*

Unloading goods. 1. If any person shall unload any goods before they come to the turnpike gate or engine; or shall lay upon such carriage, after it shall have passed the gate or engine, any goods taken from any horse, cart, or other carriage, belonging to, or hired or borrowed by the same waggoner or driver, in order to avoid the payment of the respective duties of 20 s a hundred :

Or if any person shall so unload, in order to carry considerable quantities of goods thro' any turnpike gate in one and the same day; and thereby pay less toll at such gate, than would have been paid if such goods had not been so unloaden :

He shall, on conviction before one justice, on the oath of one witness, forfeit 5 l, to be levied upon the goods of the owner; and the driver, not being the owner, so offending, and being convicted thereof as aforesaid, shall be committed to the house of correction for the space of one month. 13 G. 3. c. 84. f. 10.

Turning out of the road.

2. If the owner or driver shall turn out of the road, in order to avoid weighing or paying the toll, and shall afterwards return and proceed upon the road; he shall, on conviction before one justice, by the oath of one witness, forfeit, if he be the owner, not exceeding 5 l, nor less than 20 s; if he be the driver, and not the owner, any sum not exceeding 50 s, nor less than 10 s. 13 G. 3. c. 84. f. 11.

Taking out horses.

3. If any person shall take off any horse or other beast of draught from any waggon or other carriage, or cause the distance of the wheels to be altered before the same shall come to the gate, with intention to avoid the toll or any forfeiture or penalty; he shall, on conviction before one justice, on the oath of one witness, forfeit 5 l. 13 G. 3. c. 84. f. 17.

Taking the benefit of exemptions fraudulently.

4. If any person shall take the benefit of any exemptions fraudulently; he shall forfeit not exceeding 5 l, nor less than 40 s. 13 G. 3. c. 84. f. 28.

IX. *Carriages to be marked.*

For the better discovery of offenders, the owner of every waggon, wain, or cart, and also of every coach, post chaise, or other carriage, let to hire, shall cause to be

be painted upon some conspicuous part of his waggon, wain, or cart, and upon the pannels of the doors of all such coaches, post chaises, or other carriages, before the same shall be used on any turnpike road, his christian, and surname, and place of abode, in large legible letters, and continue the same thereupon. And the owner of every common stage waggon or cart, employed in travelling stages from town to town, shall, over and above his christian and surname, cause to be painted on the part, and in the manner aforesaid, the following words COMMON STAGE WAGGON (or CART, as the case shall be). And every person using any such carriage upon any turnpike road, without the names and descriptions painted thereon respectively, or who shall paint or cause to be painted on such carriage any fictitious name or place of abode, shall forfeit for every offence not exceeding 5 l, nor less than 20 s. 13 G. 3. c. 84. s. 68.

And if any person shall, upon any turnpike road, drive any waggon, wain, cart, or carriage, not being marked as aforesaid; the constable, surveyor, or any other person, may apprehend and carry him before a justice, and on conviction by confession or oath of one witness, he shall forfeit not exceeding 5 l, nor less than 10 s. s. 21.

X. Driver misbehaving.

If the driver of any cart, carriage, dray, or waggon shall ride upon the same in any street or highway, not having some other person on foot or on horseback to guide the same (such carriages as are conducted by some person holding the reins of the horse or horses drawing the same excepted);—or if the driver of any carriage, on any part of any street or highway, shall by negligence or wilful misbehaviour, cause any hurt or damage to any person or carriage passing or being upon such street or highway;—or shall quit the highway, and go on the other side of the hedge or fence inclosing the same;—or wilfully be at such distance from such carriage, or in such a situation, that he cannot have the direction and government of the horses or cattle drawing the same;—or shall, by negligence or wilful misbehaviour prevent or hinder the free passage of any other carriage or of his majesty's subjects;—or if the driver of any empty or unloaded waggon, cart, or other carriage, shall refuse or neglect to turn aside and make way for any coach, chariot, chaise, loaded

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loaded waggon, cart, or other loaded carriage;—or if any person shall drive, or act as the driver of any such coach, post chaise, or other carriage let for hire, or waggon, wain, or cart not having the owner's name, as hereby required, painted thereon, or shall refuse to discover the true christian and surname of the owner of such respective carriage: he shall, on conviction before one justice, by confession, or view of the justice, or oath of one witness, forfeit any sum not exceeding 10s, in case the driver shall not be the owner of such carriage; and if the offender be the owner, then any sum not exceeding 20s; and in default of payment, shall be committed to the house of correction for any time not exceeding one month, unless such forfeiture shall be sooner paid. And every such driver may, without any warrant, be apprehended by any person who shall see such offence committed, and shall be immediately conveyed to a constable or other peace officer, in order to be carried before a justice. And if such driver shall refuse to discover his name, the justice shall commit him to the house of correction for any time not exceeding 3 months; or may proceed against him for the penalty by a description of his person and offence, and expressing in the proceedings that he refused to discover his name. 13 G. 3. c. 84. s. 40.

XI. Powers of the general highway acts transferred in aid of turnpike roads.

Where the powers given by several turnpike acts are ineffectual for providing materials for the use of the turnpike roads therein described; and also for enlarging, diverting, and turning such turnpike roads; and stopping up, and selling of the old roads; and also for making, opening, and cleansing of ditches and drains, and the cutting and pruning of hedges and trees; and also for calling forth the statute duty which shall belong to such turnpike roads: the surveyor of every turnpike road, may, with the approbation of the trustees, put in execution the several powers more amply given for the like purposes in the general highway act or acts, as fully and amply as the surveyors of the several parishes or townships can or may do, by virtue of such general highway act or acts. 13 G. 3. c. 84. s. 70.

XII. Statute

XII. Statute duty and other labour on turnpike roads.

1. The turnpike surveyor shall cause the statute duty required by the several turnpike acts, and compositions arising from the same, to be expended upon the turnpike road lying within the parish, township, or place, from which such duty shall be required, and not elsewhere; on pain of 40s. 13 G. 3. c. 84. s. 32.

Statute duty to be performed within the district.

2. No turnpike surveyor shall gather or cause to be gathered any loose stones for the use of the road, upon the common fields or inclosed lands of any person, without the consent of the occupier, or a licence from a justice, after having summoned such occupier to come before him, and heard his reasons, if he shall appear, and give any, for refusing his consent. 13 G. 3. c. 84. s. 61.

Getting materials.

And where any materials shall be got by the surveyor in the several or inclosed grounds of any person for the use of any turnpike road, under the authority of this act or of the said general highway act or acts; satisfaction shall be made by the trustees of such turnpike road to the owner or occupier of such grounds for the materials so to be got, and also for the damages in carrying the same away, in such manner as satisfaction is to be made by the said general highway act or acts. s. 71.

And on every turnpike road, where a sufficient quantity of stone, gravel, chalk, or other materials cannot be provided and carried by the labourers and teams required to perform statute duty upon the same; the surveyor, with the approbation of the trustees, shall contract for the getting and carrying thereof, at some time and place to be fixed for that purpose, of which ten days notice (M) in writing shall be given; by fixing the same on the door of the church or chapel, or if there be no church or chapel, then at the most public place there, which notice shall specify the work to be done, and the time and place for letting thereof: And if any surveyor shall have any share in the contract, or in any other contract for work or materials, or shall let to hire any team, or sell or dispose of any timber, stone, or other materials, unless a licence in writing for the sale of such materials, or for letting to hire such team, be first obtained from the trustees; he shall forfeit 10l. and be incapacitated to be employed as surveyor. s. 36.

3. Where there are two or more turnpike roads under several acts of parliament, within the same parish, town-

ship, Proportioning the statute duty between several turnpike roads.

ship, or place, and the statute duty directed by all such acts for the repair of such turnpike roads shall exceed 3 days duty in the whole; two justices at a special sessions may proportion the statute duty betwixt such turnpike roads and the other highways in such parish, township, or place, in such manner as they shall think fit, having first summoned the clerks and surveyors of the turnpike roads, and likewise the surveyor of the highways for such parish, township, or place. 13 G. 3. c. 84. s. 32.

Agreement with persons obliged to repair by tenure or otherwise.

4. Whereas many persons are liable by tenure, inclosure, or otherwise, to the repair of certain highways, which having become turnpike roads are more used and occasion an increase of expence in repairing the same, which ought in some degree to be laid upon the turnpike road; the trustees of such turnpike road may agree for the repair thereof (n.) with the person liable to repair the same, in such manner as they shall think fit, and contribute so much to the repair thereof out of the tolls, or out of the statute duty belonging to the same, as they shall think just and reasonable. 13 G. 3. c. 84. s. 62.

Repair of turnpike roads diverted.

5. Where parts of highways or turnpike roads are turned by legal authority, to make the same nearer or more commodious, the inhabitants or other persons who were liable to the repair of the old highway, shall be liable to the repair of the new, or so much thereof as shall be equal to the burden and expence of repairing such old highway from which they are exonerated by turning the same as aforesaid: And if the several parties interested cannot agree, the same shall be viewed by two justices and settled by them (o.): And if it shall be found more convenient to fix a gross sum, or annual sum, to be paid by the inhabitants or other such persons, towards the repair of the new highway, instead of fixing the part or proportion of such new highway to be repaired by them; the said justices may, with the consent of such person or persons, and of the inhabitants obtained at a vestry meeting (p.) for that purpose, and also of the trustees at a public meeting, if it be turnpike road, order and direct the same accordingly. 13 G. 3. c. 84. s. 63.

Turnpike road indicted or presented.

6. When the inhabitants of any parish, township, or place shall be indicted or presented for not repairing any highway, being turnpike road, and the court shall impose a fine for the repair of such road; the same shall be proportioned, together with the costs and charges, between such inhabitants and the turnpike trustees; and the court may order the treasurer of such turnpike road, to

pay the same out of the money then in his hands, or next to be received by him, in case it shall appear to such court, from the circumstances of such turnpike debts and revenues, that the same may be paid without endangering the security of the creditors who have advanced their money upon the credit of the tolls. 13 G. 3. c. 84.

f. 33.

7. Where any turnpike road is in such a state and condition, that the statute duty required to be performed upon the same, or some part thereof may be dispensed with, and employed more conveniently for the benefit of the other public highways within the parish, township, or place; the justices, at a special sessions, upon application to them made by the surveyor of such parish, township, or place, may summon the clerk and surveyor of the turnpike road to appear before them at some other special sessions, and produce before them a state of the revenues and debts belonging to such turnpike road: And if it shall appear to them, that the whole or any part of the statute duty may conveniently be dispensed with from such turnpike road, without endangering the securities for the money advanced on the credit of the tolls; they may order (q.) the whole or part of such statute duty to be performed upon the highways not being turnpike within such district, during such time as to them shall seem just and reasonable. 13 G. 3. c. 84. f. 58.

In what case the statute duty on turnpike roads may be dispensed with.

XIII. Annoyances to be removed.

1. If the surveyor of any turnpike road shall suffer to remain for the space of 4 days, in any part thereof, within 10 feet on either side of the middle of the road, any post, heap of stones, rubbish, or earth, by which the passage thereof may be obstructed or straitened; he shall forfeit 40s. 13 G. 3. c. 84. f. 37.

Rubbish or other matter left upon the road.

2. If any person shall incroach by causing to be made any hedge, ditch, or other fence, on any turnpike road, within 30 feet from the middle thereof; or shall plough, harrow, or break up the soil of any ground, or in ploughing or harrowing the adjacent lands shall turn his plough or harrow on any ground within the distance of 15 feet from the middle thereof as aforesaid; he shall forfeit 40s to him who shall make information thereof: And the trustees, or five of them, may cause such hedge, ditch, or fence to be taken down or filled up, at the expence of the person to whom the same shall belong. And one

incroaching.

justice,

justice, on proof thereof upon oath, may levy as well the expences of taking down such hedges as aforesaid, as the several penalties hereby imposed, by distress. 13 G. 3. c. 84. §. 38.

Annoyances
prosecuted at
the expence of
the tolls.

3. The trustees, or five of them, at a meeting, may, if they think fit, direct prosecution by indictment, for any nuisance upon the turnpike road, at the expence of the tolls; provided that proof can be had, by confession of the offender, or by one witness. 13 G. 3. c. 84. §. 47.

XIV. Demolishing gates or doing other damage.

Destroying gates
or engines.

1. If any person shall, either by day or night, wilfully or maliciously, pull down, pluck up, throw down, level, or otherwise destroy, any turnpike gate, post, rail, wall, chain, bar, or other fence, set up to prevent passengers from passing without paying toll; or any house erected for the use of such turnpike gate; or any crane, machine, or engine, for weighing carriages; or shall rescue any person lawfully in custody for any the said offences: he shall be guilty of felony, and transported for 7 years, or committed to prison for any time not exceeding 3 years, at the discretion of the judge before whom the offender shall be tried. And the indictment for such offence may be inquired of, heard, and determined in any adjacent county. 13 G. 3. c. 84. §. 42. And the hundred shall answer damages, as in cases of robbery. §. 43.

If the trustees shall erect a gate where they have no power; the justices in sessions, upon complaint, may hear and determine the same in a summary way, and order the sheriff to remove it. §. 51.

Destroying di-
rection posts,
blocks, mile
stones, or para-
pets of bridges.

2. Where several highways meet the trustees shall cause the surveyor to erect a stone or post, with an inscription thereon in large letters, containing the name of and distance from the next market town or towns or other considerable place or places to which the said highways respectively lead; and also, at the several approaches or entrances to such parts of any highways as are subject to deep and dangerous floods, graduated stones or posts, denoting the depth of water in the deepest part thereof, and likewise such direction posts or stones as the trustees shall judge necessary for the guiding of travellers in the best and safest tract thro' the said floods or waters; and also shall order the surveyor to erect mile stones or posts upon

upon such turnpike road, with proper inscriptions and figures thereon, denoting the names and distances from the principal towns or places on each respective road. 13 G. 3. c. 84. s. 41.

And if any person shall wilfully or wantonly pull down, obliterate, or deface any mile stone or post, graduated or direction post or stone; or shall pull up, cut down, remove, or damage any post, block, or stone fixed in the ground for securing any horse causeway or foot causeway, on the side of any turnpike road; or dig or cut down any bank of earth cast up for the said purpose; or shall break, damage, or throw down the stones, bricks, or wood fixed upon the parapets or battlements of bridges: he shall, on conviction before one justice, upon view, or by the oath of one witness, forfeit not exceeding 5 l, nor less than 10 s; and in default of payment, shall be committed to the house of correction, to be whipped and kept to hard labour, not exceeding one calendar month, nor less than 7 days, unless the same be sooner paid. s. 39.

XV. Side Gates.

No side gate shall be erected on any turnpike road, unless the same be ordered by the trustees at a meeting, of which 21 days notice shall have been given in writing, affixed upon all the toll gates erected on such roads, and also in some public news paper circulated in that part of the country, specifying the place where such side gate is proposed to be erected; and unless nine trustees at least, being a majority of those present, shall sign the said order at such meeting: And no person shall be liable to pay toll at any gate erected across or on the side of any turnpike road, or be subject to any penalty for any carriage, horse, or beast, which shall only cross such road, and shall not pass above 100 yards thereon; except over some bridge erected at a considerable expence by the trustees. 13 G. 3. c. 84. s. 34.

But this shall not affect any toll gate directed or authorized to be set up at any place particularly specified and mentioned in any act of parliament for repairing any highway, passed before the making of the act of the 13 G. 3. c. 57.

XVI. Farming of the tolls.

The trustees of any particular turnpike act, or any 7 or more of them, at a public meeting, may let to farm the tolls, tho' no express power to let the same be given by

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such act: And whenever any tolls shall be let to farm, the following directions shall be observed; that is to say, The trustees shall cause notice (R) to be given of the time and place for letting the same at least one month before; by fixing the same upon every toll gate belonging to such turnpike road, and also upon the market crofs of the market town nearest to the place where the tolls are to be let, and also in some public news paper circulated in that part of the country, and specifying in such notice the sum which the said tolls produced in the preceding year, clear of the salary for collecting the same (in case any hired collector was appointed), and that they will let such tolls by auction to the best bidder, on his producing sufficient sureties for payment of the money weekly or quarterly as shall be required by the trustees; and that they will be put up at the sum which they were let for, or did produce, in the preceding year, clear of the salary of the collector: And the trustees shall provide a glass, with so much sand in it as will run from one end of it to the other in one minute; which glass shall be set upon a table, and immediately after every bidding the glass shall be turned; and as soon as the sand is run out, it shall be turned again; and so for 3 times, unless some other bidding intervenes: And if no other person shall bid, until the sand shall have run thro' the glass for 3 times; the last bidder shall be the farmer of the tolls. And if no bidder shall offer, the trustees may appoint a collector, or fix some future day for the letting thereof as aforesaid, and in that case may put them up at such sum as they shall think fit. And if the farmer of the tolls shall take a greater or less toll than he ought to do, he shall forfeit 5*l*, and also the contract, if the trustees shall think fit to vacate the same: And every other gate keeper, who shall take a greater or lesser toll than as aforesaid, shall forfeit 40*s*. 13*G*. 3. c. 84. *f*. 31.

XVII. Mortgagee to account.

Every mortgagee, that shall have taken possession of the toll gate or bar, shall within 14 days after notice given to him in writing from the trustees or any five of them, render upon oath, to be administered by any trustee, an exact account in writing of all money received by him or by any other to his use, at such toll gate or otherwise, and what he hath expended in keeping or repairing the same: And if he shall neglect to render such
account,

account, he shall, on conviction in a summary manner before one justice, forfeit for every omission the sum of 10 l, to the use of the road. 13 G. 3. c. 84. s. 52.

And if the mortgagee shall keep possession, after he hath received the full sum due to him, with interest and costs; he shall forfeit double the sum that he shall have received over and above what was due to him, with treble costs: To be recovered by the trustees, or by their clerk or treasurer, in any of his majesty's courts of record; to be applied to the use of the roads. s. 53.

XVIII. Power of lessening the tolls.

Where any turnpike road shall be sufficiently or in a great degree repaired, and the greatest part of the money borrowed upon the credit thereof hath been paid; the trustees, or 7 of them, at a meeting for that purpose, of which one calendar month's notice shall be given in writing, to be affixed on all the turnpike gates upon such road, and in some public news paper circulated in that part of the country, may lessen the tolls during such time as they shall think proper. 13 G. 3. c. 84. s. 29.

Provided, that where the whole money borrowed on the credit of the tolls shall not have been discharged; no such tolls shall be lessened without the consent of the person or person intitled to five sixths of the money remaining due upon such respective tolls. s. 30.

XIX. Penalty of obstructing the execution thereof.

If any person shall resist or make forcible opposition against any person employed in the due execution of this act, or of any particular turnpike act; — or shall assault any collector of the tolls in the execution of his office; — or shall pass thro' any gate, rail, chain, or fence, without paying toll; — or shall hinder or attempt to prevent or obstruct any person in measuring the wheels of any carriage; — or make any rescue of cattle or other goods distrained; ---- or if the constable shall refuse or neglect to execute any justice's warrant: he shall forfeit not exceeding 10 l, nor less than 40s, to be paid to the surveyor for the use of the turnpike road; and if not forthwith paid or secured, he shall be committed to the common gaol or house of correction for any time not exceeding 3 months, unless the forfeiture shall be sooner paid. 13 G. 3. c. 84. s. 75.

XX. *Levyng and application of forfeitures.*

All penalties and forfeitures by this act imposed, and all costs and charges to be allowed and ordered by authority of the same, the manner of levyng and recovering whereof is not hereby otherwise particularly directed, shall be levied by distress and sale of the goods of the offender, or of the person ordered to pay the said costs respectively, by warrant of one justice, on conviction (a. b. c. d. e. f. g.) of the offender by confession or oath of one witness, or upon such order made as aforesaid: the same to be paid half to the informer, and half to the surveyor for the use of the turnpike road, unless otherwise particularly directed. And in case such distress cannot be found, and such penalties and forfeitures, or the said costs and charges, shall not be forthwith paid; such justice shall commit the offender, or person liable to pay the same respectively, to the common gaol or house of correction for any time not exceeding 3 months, unless the said penalty, forfeiture, costs, or charges shall respectively be sooner paid. 13 G. 3. c. 84. f. 76.

And any inhabitant of any parish, township, or place where the offence shall be committed, may be a witness, notwithstanding his being an inhabitant. f. 74.

And any justice may act in the execution hereof, notwithstanding he may be a creditor or trustee. *Id.*

And if the offender live out of the jurisdiction of the justice, any justice of the limit where the said person shall inhabit shall, on request to him made, and a true copy of the conviction for the penalty or forfeiture, or of the order for the payment of costs or charges, being produced and proved before him upon oath, cause the said penalty or forfeiture, or the said costs or charges, to be levied by distress; and if no sufficient distress can be had, shall commit such person to the common gaol or house of correction of such limit, for the time and in the manner aforesaid. f. 76.

Provided, that no warrant of distress, unless otherwise directed by this act, shall be issued for levyng any penalty or forfeiture, costs or charges, until six days after the offender shall have been convicted, and an order made and served upon him for payment thereof. f. 77.

Provided also, that every penalty or forfeiture that shall be recovered on the information of the surveyor, or toll taker, or other person employed by the trustees, and receiving

ceiving salaries or rewards for their services, and not otherwise directed by this act, shall be applied to the amending of the said turnpike roads respectively, and to no other use.

f. 78.

And to prevent fraudulent convictions, the justice before whom any information shall be brought, shall, in case any other information or conviction shall be set up by way of defence, proceed to examine into the real merits of such information, proceeding, or conviction; and if it shall appear that the same was not done to recover and apply the penalty or forfeiture for the real ends for which it was intended, but to favour the offender, such information or conviction shall be deemed to be fraudulent, and the justice may proceed to convict as if no such information or conviction had been made. f. 48.

And every prosecutor or informer may, at his option, sue for and recover any forfeiture or penalty imposed by this or any other act for erecting turnpikes or repairing turnpike roads, in manner following: viz. If the same shall not amount to 40 s, it shall be recoverable only by information before a justice; and if it shall amount to 40 s or upwards, it may be recovered either before a justice as aforesaid, or by action of debt in any of his majesty's courts of record; in which it shall be sufficient to declare, that the defendant is indebted to the plaintiff in the sum of — being forfeited by an act passed in the 13th year of his present majesty, intituled, *An act to explain, amend, and reduce into one act of parliament, the general laws now in being, for regulating the turnpike roads in that part of Great Britain called England, and for other purposes*: And the plaintiff, if he recovers, shall have full costs. Provided, that ten days notice in writing be given to the party offending, previous to the commencement of the action; and that the same be brought within one calendar month after the offence committed. f. 79.

XXI. Irregularity in the proceedings.

Where any distress shall be made for any sum to be levied by virtue of this act, the distress shall not be deemed unlawful, nor the party making the same be deemed a trespasser on account of any defect or want of form in the proceedings; nor shall the party distraining be deemed a trespasser *ab initio*, on account of any irregularity which shall be afterwards done by the party distraining; but

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the person aggrieved by such irregularity may recover satisfaction for the special damage in an action on the case. 13 G. 3. c. 84. §. 80.

And the plaintiff shall not recover in any action for such irregularity, if tender of sufficient amends shall be made before the action brought; and if no such tender hath been made, the defendant may by leave of the court, at any time before issue joined, pay into court such sum as he shall see fit; whereupon such proceedings shall be had as in other actions where the defendant is allowed to pay money into court. §. 81.

And no proceedings upon this act shall be quashed or vacated for want of form, or removed by Certiorari or other process into any of his majesty's courts of record at Westminster. §. 82.

XXII. Appeal.

If any person shall think himself aggrieved by any thing done by any justice in pursuance of this act, except under the particular circumstances hereafter mentioned, and for which no particular method of relief is herein otherwise appointed; he may appeal to the general quarter sessions, giving notice in writing (h.) to the justice of his intention to bring such appeal, and of the matter thereof, within six days after the cause of such complaint arose, and within four days after such notice entering into recognizance before a justice with one sufficient surety, conditioned to try such appeal at, and abide the order of, and pay such costs as shall be awarded by the justices at such quarter sessions. And the justice, having received notice of such appeal, shall return all proceedings before him touching the matter of such appeal, to the said sessions, on pain of 5l. And the justices at such sessions, on proof of the notice given, and of the entering into such recognizance, shall hear and determine the appeal in a summary way, and award costs to either party as they shall see cause, to be levied and recovered as herein before directed. 13 G. 3. c. 84. §. 82.

Provided, that no appeal shall be made against any conviction for any penalty or forfeiture, unless the person convicted shall, at the time of the conviction if he shall be then present, if not, within six days after, give notice of his intention to appeal, and at the same time enter into recognizance or give security with sufficient sureties, to pay such penalty or forfeiture, in case the conviction shall

be affirmed upon the appeal : And on his giving such security, the further proceedings for such penalty or forfeiture shall be suspended, until the appeal shall be heard and determined. *f. 83.*

XXIII. Limitation of actions.

If any action shall be commenced against any person, for any thing done in pursuance of this act, the same shall be commenced within 3 calendar months after the fact committed, and in the county where the defendant resides or the fact was done : And the defendant may plead the general issue, and if he prevails in the action, he shall have treble costs. *13 G. 3. c. 84, f. 85.*

THE Forms of proceedings under this Title are specially directed by the several acts, to be used upon all occasions, with such additions or variations only as may be necessary to adapt them to the particular exigencies of the case : And no objection shall be made, or advantage taken for want of form in any such proceedings. So that it is necessary only in this place to insert the said forms as they stand in the acts ; unto which are added divers forms of *indictments*, and one other precedent of an *order* for payment of a penalty or forfeiture previous to the warrant of distress.

A. Warrant for making lists of persons qualified to be surveyors.

Middlesex. { To the constables, &c.

IN order to carry into execution an act made in the 13th year of the reign of his majesty king George the third, for the amendment and preservation of the public highways, you are hereby severally required, forthwith to give public notice to the churchwardens, surveyors of the highways, and householders, being assessed to any parochial or public rate within your respective liberties, that they do assemble on the 22d day of September next, at the church or chapel, or if there shall be no church or chapel, then at the usual place of public meetings within their respective liberties, at the hour of 11 in the forenoon ; and that the major part of them so assembled do make

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a list of the names of at least ten persons living therein, who each of them have an estate in lands, tenements, or hereditaments, lying within the same, in their own right, or in the right of their wives, of the value of 10l by the year; or a personal estate of the value of 100l; or are occupiers or tenants of houses, lands, tenements, or hereditaments, of the yearly value of 30l: And if there shall not be ten persons having such qualifications, then that they do insert in such list the names of so many of such persons as are so qualified, together with the names of the most sufficient and able inhabitants not so qualified, as shall make up the number ten, if so many can be found, if not, so many as shall be there resident, to serve the office of surveyor of the highways. And you are also severally required, within three days after making the said list, to deliver a copy thereof to one of the justices of peace of the said ——— living in or near the same [parish, &c.] and also to give personal notice to, or cause notices in writing to be left at the places of abode of the several persons contained in such list, informing them of their being so named, to the intent that they may severally appear before the said justices at their special sessions to be holden at ——— within the said ——— on the ——— day of ——— now next ensuing, at the hour of ——— in the forenoon of the same day, to accept such office, if they shall be appointed thereto, or to shew cause, if they have any, against their being appointed. And you are likewise to give notice to the present surveyors of the highways within your respective liberties, to appear at the same time and place, and produce such accounts and lists before the said justices as are required by the said act. And you, and each of you, are personally to appear before the said justices, at their said special sessions, and then and there severally deliver to the said justices the said original list or lists taken within your respective liberties, and give an account of the execution of this our precept. Given under our hands and seals, the ——— day of ——— in the year of our lord ———.

B. List of persons to be returned to the justices.

A LIST of the several persons named for surveyors of the highways for the [insert the name of the parish, township, or place] at a meeting held at ——— in the said ——— the ——— day of ——— 1774.

A. B.

C. D. &c.

[This

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[This to be added when a particular person is recommended—*We whose names are subscribed, being two parts in three of the persons assembled at the meeting aforesaid, do agree in the choice of A. S. as a fit person to serve the office of surveyor for the — of — aforesaid, and in the allowance to him of — for his trouble in executing the same for the year ensuing; and we do recommend the said A. S. to the justices for their appointment accordingly.*]

C. Notice to the persons in the list.

A. B. take notice, That you was at a meeting held at — on the — day of — named as one of the persons to be returned to the justices as fit to serve the office of surveyor for the said — for the year ensuing; and if you have any cause to shew why you should not be appointed to serve such office, you must make the same appear before the justices, at their special sessions to be holden at — on the — day of — next.

A. C. Constable, &c.

D. Appointment of a surveyor.

Middlesex. { At a special sessions held at — in the hundred of — by justices of the peace for the said county, acting within the said hundred, on the — day of — 1774.

WE do hereby nominate and appoint A. S. of — in the said hundred, surveyor of the highways within the said — for the year ensuing: And you the said A. S. are faithfully and truly to execute the said office of surveyor, according to the directions of the statute passed in the thirteenth year of the reign of his majesty king George the third “For the amendment and preservation of the highways”; an abstrait of the material parts of which statute is hereunto annexed. Given under our hands and seals the day and year abovementioned.

If a surveyor is appointed with a salary, then after the words year ensuing, add, *And we do allow the said A. S. the salary of — for his trouble.*

E. Appoint-

E. Appointment of an assistant to the surveyor.

Middlesex. { At a special sessions held at — in the
hundred of — by justices of the peace
for the said county, acting within the said
hundred, on the — day of — 1774.

WE do hereby nominate and appoint A. S. a substantial inhabitant of the — of — in the said hundred, assistant to A. B. whom we have appointed surveyor of the highways for the said — And you the said A. S. are, to the best of your skill and judgment, to assist the said surveyor, whenever requested by him, in calling-in and attending the performance of the statute duty, in collecting the compositions, fines, penalties, and forfeitures, and in making and collecting the assessments, and in making out and serving the notices authorized by the act passed in the thirteenth year of the reign of his majesty king George the third "For the amendment and preservation of the highways", and in such other matters and things as shall be reasonably required of you by the said surveyor, in the execution of his office of surveyor, pursuant to the said act; and you are justly and truly to account with, and pay to the said surveyor, or to his order, the money which shall come to your hands by the means aforesaid. Given under our hands and seals, the day and year above-mentioned.

F. Notice of the time and place for compositions.

NOTICE is hereby given, That all persons who are inclined to compound for their statute duty within the — of — are hereby required to signify their intention to compound for the same to A. S. the surveyor of the highways for the said — at the house of — of — on the — day of this instant November, between the hours of — and — And they are hereby required, at the same time, or within the space of one month after, to pay their composition money to the said surveyor: And also, that all persons who are liable to pay money for the lands, tenements, woods, tithes, and hereditaments, which they occupy, or in lieu of their duty within the said — according to the act made in the thirteenth year of his majesty king George the third "For the amendment and preservation of the highways," are required to pay the same to the said surveyor, on the day, or within the time aforesaid, Dated this — day of November, 1774.

A. S. Surveyor.

G. Notice

G. Notice to perform statute duty.

A. B. you are hereby required to send (as the case shall be) to — within the — of — on the — and — days of — next, at — o'clock in the morning of each day, in order to perform such duty upon the highways within the said — as shall be required by the surveyor, pursuant to the direction of the act passed in the 13th year of the reign of his majesty king George the third "For the amendment and preservation of the highways". Dated this — day of — 1774.

If personal labour is required, then say, You are hereby required, by your self or a sufficient labourer, to attend at — within the &c.

H. Notice from the surveyor to prune hedges, scour ditches, and remove nuisances.

To C. D. of —

IN pursuance of the directions given by the act passed in the 13th year of the reign of his majesty king George the third "For the amendment and preservation of the highways", I A. S. surveyor of the highways for the — of — do hereby give you notice, forthwith to cut, prune, and plash the hedges, and cut or prune the trees, and to open, cleanse and scour the several ditches and watercourses, belonging to you, in or near the highway, lying between — and — to the intent that the water may be drained from the said highway, and that the sun and wind may not be excluded from such highway, to the prejudice thereof:

[Or, forthwith to remove the (dung, timber, stone, &c.) placed by you in a certain part of the king's highway, lying between — and — in the — of — to the obstruction and annoyance of the said highway:]

Dated this — day of — 1774.

A. S.

I. Allowance

I. Allowance of charges to the surveyor for removing the same.

Middlesex. **W**HEREAS complaint hath been made unto me J. P. esquire, one of his majesty's justices of the peace for the said county, by the oath of A. S. surveyor of the highways for the ----- of ----- in the said county, that A. O. of ----- having had due notice to cut and prune his hedges, and cleanse and scour his ditches and watercourses, within or adjoining to the public highway between ----- and ----- in the said ----- of ----- hath neglected to do the same within the time required by such notice, and that the said A. S. hath caused the same respectively to be cut, pruned, cleansed, and scoured, pursuant to the directions of the act passed in the thirteenth year of the reign of his majesty king George the third "For the amendment and preservation of the highways", and hath expended therein the sum of ----- as appears by an account now produced to me, which I think a reasonable charge, and do therefore allow the same, and hereby order the said A. O. to pay the said sum of ----- to the said A. S. within six days from the time of his being served with this order. Given under my hand and seal this ----- day of ----- 1774.

K. Order of a justice to make new drains.

Middlesex. { To A. S. of ----- surveyor of the highways for the ----- of -----

WHEREAS complaint hath been made unto me J. P. esquire, one of his majesty's justices of the peace for the said county, that the ditch, gutter, or watercourse, for conveying the water from the highway at ----- in the ----- of ----- in the said county, is not sufficient for that purpose, and that the cleansing and opening the same will not effectually carry off the said water, but that the said highway may be effectually drained, and the water carried off, by making a new ditch or drain thro' the lands or grounds of ----- lying near the same, for the length of ----- yards and the breadth of ----- feet; and the said ----- having been duly summoned to appear before me, to shew cause, if he had any, why the said ditch or drain should not be made, and the said ----- not appearing (or, not shewing sufficient cause against the

the same), and it appearing to me that such ditch or drain is necessary, I do hereby order and require you to enter into and upon the said lands of the said ——— and there make or cause to be made a new ditch or drain, of the length and breadth aforesaid, and of a convenient depth, making or tendering sufficient satisfaction to the said ——— for the damages to be done thereby, within one calendar month after the same shall be so made; such damages to be settled and ascertained in manner directed by the act passed in the thirteenth year of the reign of his majesty king George the third "For amendment and preservation of the highways". Given under my hand this ——— day of ——— 1774.

L. Precept for erecting guide posts or water marks.

Middlesex, { At a special sessions held at ——— for the
hundred of ——— in the said county, before
justices of the peace for the said county,
acting within the said hundred on the ———
day of ——— 1774.

To the surveyor of the ——— of ——— in the said
hundred.

YOU are hereby required forthwith to erect, or cause to be erected, in the most convenient place upon the highway lying between ——— and ——— within your liberty, where the roads cross or branch out, a guide post, with proper inscriptions painted on both sides thereof, in large legible letters, denoting the towns of ——— and ——— (or other places as the justices shall think proper); and you are allowed to charge the reasonable expences of providing and erecting the same in your accounts.

Where graduated stones or posts are necessary to prevent accidents from water, it may be varied thus:—In the most convenient place upon the highway, at the approach or entrance on each side of the ford or water called ——— at ——— within your liberty, graduated posts, denoting the depth of water in the deepest part thereof, through which such highway passes. ———

M. Order

M. Order for widening or diverting an highway.

Middlesex. **WE** — two of his majesty's justices of the peace for the said county, acting within the hundred of — within the said county, having, upon view, found that a certain part of the highway between — and — in the (parish, &c.) of — in the said hundred, for the length of — yards or thereabouts, and particularly described in the plan hereunto annexed, is for the greatest part thereof narrow, but may be conveniently enlarged and widened, by adding thereto from the lands and grounds of — and — of the length of — yards or thereabouts, and of the breadth of — feet or thereabouts, particularly described in the plan hereunto annexed, which we think will be much more commodious to the publick; we do hereby order, that the said highway be widened and enlarged thro' the lands aforesaid; and that the surveyor of the highways for the — of — where the said old highway lies, do forthwith proceed to treat and make agreement with the said — and — for the recompence to be made for the said ground, and for the making such ditches and fences as shall be necessary, in such manner, with such approbation, and by pursuing such measures and directions in all respects, as are warranted and prescribed by the statute made in the thirteenth year of the reign of his majesty king George the third "For the amendment and preservation of the highways": And in case such agreement shall be made as aforesaid, we do order an equal assessment, not exceeding the rate of sixpence in the pound, to be made, levied, and collected upon all and every the occupiers of lands, tenements, woods, tithes, and hereditaments in the said — of — and that the money arising thereupon be paid and applied in making such recompence and satisfaction as aforesaid, pursuant to the directions of the said act.

If the road is to be turned, then, after the words is for the greatest part thereof narrow, say, and cannot be conveniently enlarged and made commodious for travellers, without diverting and turning the same; and having viewed a course proposed for the said new highway through the lands and grounds &c. And afterwards, instead of the words be widened and enlarged, say, be diverted and turned.

N. Certi-

N. Certificate to the sessions thereupon.

Middlesex. { To the justices of the peace, at their general quarter sessions to be held at — in the said county, the — day of — 1774.

WE the within named A. B. and C. D. do hereby certify to the said court of quarter sessions, that we made and signed the within order; and that, with our approbation, and by our direction, the said surveyor hath treated with the said — and — for the said lands required for the purposes aforesaid, but was not able to make any agreement for that purpose with them or either of them; and that he tendered to the said — the sum of — and to the said — the sum of — as a recompence for the said ground, and for making the said ditches and fences; which they, and each of them, refused to receive.

O. Order for stopping up an old way.

WE whose names are subscribed, being the justices of peace who have viewed the several highways described in the plans hereunto annexed, and made an order for diverting the old highway; and being satisfied that the new highway therein described is properly made, and fit for the reception of travellers, do hereby order the said old highway, being of the length of — yards and of the breadth of — feet upon a medium, as appears by the said plan, to be stopped up, and the land and soil thereof to be sold by the said surveyor to — whose land adjoins thereto, if he shall be willing to purchase the same, for the full value thereof; if not, to some other person or persons, for the full value thereof.

This to be added, if needful; and to be varied as circumstances may require. — Reserving nevertheless to — a free passage for persons, horses, cattle, and carriages, thro' the land and soil of the said old highway to and from the (land, &c.) belonging to him, called — according to his ancient usage thereof.

P. Order

P. Order for turning a highway thro' any person's lands, with the owner's consent.

Middlesex. **W**^E ——— and ——— esquires, two of his majesty's justices of peace for the said county, at a special sessions held at ——— in the hundred of ——— in the said county, on the ——— day of ——— 1774, having upon view found, that a certain part of a highway within the ——— of ——— in the said hundred, lying between ——— and ——— for the length of ——— yards or thereabouts, and particularly described in the plan hereunto annexed, may be diverted and turned so as to make the same nearer [or, more commodious] to the publick; and having viewed a course, proposed for the new highway, in lieu thereof, thro' the lands and grounds of ——— of the length of ——— yards or thereabouts, and of the breadth of ——— feet or thereabouts, particularly described in the plan hereunto annexed, and having received evidence of the consent of the said ——— to the said new highway being made thro' his lands herein before described, by writing under his hand and seal; we do hereby order, that the said highway be diverted and turned through the lands aforesaid; and we do order an equal assessment, not exceeding the rate of 6 d in the pound, to be made, levied, and collected, upon all and every the occupiers of lands, tenements, woods, tithes, and hereditaments in the said ——— of ——— and that the money arising thereupon be paid and applied in making recompence and satisfaction for the same unto the said ———

Q. Form of such consent.

I A. B. of ——— in the county of ——— being owner of the lands described in the plan hereunto annexed, through which part of a certain highway, lying between ——— and ——— is intended to be diverted and turned, in consideration of the sum of ——— to be paid to me for the said land and the soil thereof [or as the case shall be], do hereby consent to the making and continuing such new highway through my said lands. Given under my hand and seal, this ——— day of ——— 1774.

R. Notice

R. Notice of application to be made for a general assessment.

Middlesex. **N**OTICE is hereby given, that application will be made to the justices of the peace acting for the hundred of — in the said county, at their special sessions to be held at — in the said hundred, on the day of — 1774, for an equal assessment to be made, not exceeding — in the pound, upon all and every the occupiers of lands, tenements, woods, tithes, and hereditaments within the — of — for the use and benefit of the highways within the said — Dated this — day of — 1774.

A. B. Surveyor.

S. Order for such general assessment.

Middlesex. { At a special sessions for the highways, held at — in the hundred of — in the said county, the — day of — 1774, by justices of peace for the said county acting within the said hundred.

UPON application made to us by the surveyor of the highways for the — of — and upon evidence given upon oath before us, that the duty directed to be performed, and the money authorized to be collected and received, by an act passed in the thirteenth year of the reign of his majesty king George the third "For the amendment and preservation of the highways", have been performed, applied, and expended, according to the directions of the said act:

[Or,—upon evidence given upon oath before us, we are fully satisfied, that the common highways, bridges, causeways, streets, and pavements belonging to the — of — are so far out of order, that they cannot be sufficiently amended and repaired; paved, cleansed, and supported, by the means prescribed by an act passed in the thirteenth year of the reign of his majesty king George the third "For the amendment and preservation of the highways":]

And it appearing to us, that notice hath been duly given of such intended application, according to the direction of the said act, we do hereby order, direct, and appoint, that an equal assessment, not exceeding the sum of — in the pound,

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upon all and every the occupiers of lands, tenements, woods, tithes, and hereditaments, within the said — of — shall be forthwith made by the said surveyor, and shall be allowed by one justice of the peace for the said hundred, and shall be collected by the said surveyor; and that the money so to be assessed and collected shall be applied for and towards the amending, repairing, paving, cleansing and supporting such highways, causeways, streets, pavements, and bridges, and for other purposes as directed by the said act.

T. Surveyor's oath on passing his accounts.

I A. B. do swear, that the accounts now produced and delivered by me, as surveyor of the highways for the — of — for the last year, are just and true, to the best of my knowledge. — So help me God.

U. Allowance of the accounts.

October the — 1774.

T H E S E accounts were examined and allowed before —.

V. Indictment for not repairing a common highway.

Westmorland. **T** H E jurors for our lord the king upon their oath present, that from the time whereof the memory of man is not to the contrary, there was, and yet is a common and ancient king's highway leading from the town of — in the county of — towards and unto the market town of — in the county of —, used for all the liege subjects of our said lord the king, and of his predecessors, with their horses, coaches, carts, and carriages to go, return, pass, ride, and labour at their will and pleasure, and that a certain part of the same king's common highway, situate, lying and being in the parish of — in the county of — aforesaid, beginning at a place called — and so continued towards the market town of — aforesaid, for the length of — feet, and being of the breadth of — feet, on the — day of — in the — year of the reign of — and continually afterwards, until the day of the taking of this inquisition, was

and yet is in great decay, for the want of due reparation and amendment of the same: so that the subjects of our said lord the king, passing and travelling through the same, with their horses, coaches, carts and carriages, could not during the time aforesaid, nor yet can go, return, pass, ride, and labour without great danger; to the great damage and common nuisance of all the liege subjects of our said lord the king, passing through that way, and against the peace of our said lord the king, his crown and dignity; And that A. O. of — aforesaid, gentleman, ought by reason of the tenure of his lands and tenements, situate, lying and being at — aforesaid in the county aforesaid, to repair and amend the said highway, when and so often as it shall be necessary.

Or, that the inhabitants of the said parish of — in the said county of — the common highway aforesaid (so as aforesaid being in decay) ought to repair and amend, when and so often as it shall be necessary.

Indictment for not repairing an ancient horse and foot way.

Westmorland. **T**HE jurors for our lord the king upon their oath present, that from the time of which the memory of man is not to the contrary, there was, and yet is, a certain common and ancient highway, leading from — in the county of — to — in the county of — for all the liege subjects of our now lord the king, and his ancestors, on horseback and on foot, to go, return, pass, ride, labour, and drive their cattle at their will, and that a certain part of the same common highway, situate, lying, and being within the parish of — in the county of — aforesaid, beginning at a place called — and so continued towards the said — of — in the county of — aforesaid, of the length of — feet, and the breadth of — feet, on the — day of — in the — year of the reign of — and continually afterwards, until the day of the taking this inquisition, at the parish of — aforesaid, in the county aforesaid, was, and yet is, very ruinous, miry, deep, broken, and in such decay, for want of due reparation and amendment of the same, that the liege subjects of our said lord the king, by and through the same way, with their horses and cattle, could not during the time aforesaid, nor yet can go, return, pass, ride, and labour, as they ought and were wont to do, without great danger of themselves and of their goods,

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to the great damage and common nuisance of all the liege subjects of our said lord the king, through the same highway going, returning, passing, riding, and labouring, and against the peace of our said lord the king. And that the inhabitants of the same parish of ----- in the county aforesaid, the same common highway, so as aforesaid being in decay, ought to repair and amend, when, and so often as it shall be necessary.

Indictment for incroaching upon a highway, by building thereupon.

Westmorland. **T**HE jurors for our lord the king upon their oath present, that A. O. late of ----- carpenter, the ----- day of ----- in the ----- year ----- with force and arms, at ----- in and upon a common highway, in a certain place commonly called ----- there leading from ----- to ----- by a certain building there containing in length ----- feet, and in breadth ----- feet, by him the said A. O. erected and built, bath unlawfully and unjustly incroached, and doth yet incroach, and the building aforesaid so as is aforesaid erected and built by him the said A. O. from the aforesaid ----- day of ----- in the year aforesaid, unto the day of exhibiting this information, at ----- aforesaid in the county aforesaid, with force and arms unlawfully and unjustly bath continued, and doth yet continue, by reason whereof the common highway aforesaid bath become and is greatly straitned, so that the lieges and subjects of the said lord the king upon and through the same common highway aforesaid, with their horses, carts, and carriages, cannot go, pass, ride, and labour as they ought and were wont to do, to the great and common nuisance of all the lieges and subjects of the said lord the king in and through the said common highway going, passing, riding, and labouring, and against the peace of the said lord the king. Trecm. 196.

Indictment for inclosing the highway.

Westmorland. **T**HE jurors for our lord the king upon their oath present, That whereas from the time whereof the memory of man is not to the contrary, the liege subjects of our said lord the king had, and lawfully used a certain common highway at ----- in the said county, in a certain place there called ----- leading from the town of ----- aforesaid.

— aforesaid, to the town of — for themselves and their goods, without any stoppage or hindrance by any ditches, hedges, or other obstacles whatsoever; nevertheless one A. O. of — aforesaid, in the county of — aforesaid, yeoman, on the — day of — in the — year of the reign of — with force and arms at — aforesaid, in the county of — aforesaid, in the place aforesaid called — upon the common highway aforesaid, a certain ditch and quickset hedge did cast up, set, and erect, and the said ditch and quickset hedge so as is aforesaid cast up, set, and erected, doth yet continue and keep; to the great stoppage and hindrance of the liege subjects of our said lord the king, passing in and thro' the said common highway, and against the peace of our said lord the king.

Indictment for laying timber or other obstructions in the highway.

Westmorland. **T**HE jurors for our lord the king upon their oath present, that A. O. late of — in the county aforesaid, yeoman, on the — day of — in the — year of the reign of — and on divers other days and times as well before as afterwards, with force and arms, at — in the said county, in and upon the king's common highway there, leading from — unto the town of — divers great pieces of timber put and placed, and caused to be put and placed, and the same great pieces of timber so as aforesaid put and placed from the aforesaid — day of — in the — year aforesaid, until the day of exhibiting this information, in and upon the king's common highway aforesaid to be, lie, and remain, hath permitted and doth still permit, to the grievous and common nuisance of all the lieges and subjects of the said lord the king, upon and through the king's common highway aforesaid going, passing, riding and travelling, and against the peace of our said lord the king, his crown and dignity. Trem. 197.

Or, — great quantity of dung and other filth, by reason whereof divers hurtful and unwholesome smells from the said dung and other filth did then and there arise, and thereby the air there became, was, and is corrupted and infected —.

Or, — cart loads of rubbish — by reason whereof the said highway for the whole time aforesaid was straitned and obstructed, so that the liege subjects of our said lord the king could

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not so freely pass and repass about their lawful business, through the said common highway there, as they ought and have been accustomed —.

Indictment for stopping up a watercourse, whereby the highway is overflowed.

Westmorland. **T**HE jurors for our lord the king upon their oath present, that A. O. late of the parish of — in the county aforesaid, yeoman, on the — day of — in the — year of the reign of — with force and arms, at the parish aforesaid, in the county aforesaid, a certain ancient watercourse adjoining to the king's common highway, within the same parish, leading from the town of — in the county aforesaid, towards and unto — with gravel and other materials, unlawfully and injuriously did obstruct and stop up; and the said watercourse, so as aforesaid obstructed and stopped up from the said — day of — in the year aforesaid until the day of the taking of this inquisition, at the parish aforesaid in the county aforesaid, unlawfully and injuriously hath continued and still doth continue, by reason whereof the rain and waters that were wont and ought to flow and pass through the said watercourse, on the same day and year, and divers other days and times afterwards, between that day and the day of the taking of this inquisition, did overflow and remain, in the king's common highway aforesaid, and thereby the same was, and yet is greatly hurt and spoiled; so that the liege subjects of our said lord the king, through the same way with their horses, coaches, carts and carriages, then and on the said other days and times could not nor yet can go, return, pass, ride, and labour as they ought, and were wont to do, to the great damage and common nuisance of all the liege subjects of our said lord the king, through the same highway going, returning, passing, riding and labouring, and against the peace of our said lord the king.

W. Notice for a vestry or other public meeting.

NOTICE is hereby given, That a vestry or public meeting will be held at — on the — day of — next, in order to [here set forth the particular occasion]. Dated the — day of — 1774.

A. C. Constable, &c.

X. Present.

X. Presentment by a justice of a road being out of repair.

Middlesex. **A**T the general quarter sessions of the peace of our lord the king held for the said county, at — in the said county, on — the — day of — in the — year of the reign of — before — and — esquires, and others their companions, justices of our said lord the king, assigned to keep the peace in the said county, and also to hear and determine divers felonies, trespasses, and other misdemeanors in the said county committed, J. P. esquire, one of the justices of our said lord the king, assigned for the purposes aforesaid, by virtue of an act made in the thirteenth year of the reign of his majesty king George the third “ For the amendment and preservation of the highways”, upon his own view [or, if it is upon the information of the surveyor, then say, upon information on oath to him given by A. S. surveyor of the highways for the — of — in the said county] doth present, That from the time whereof the memory of man is not to the contrary, there was and yet is a certain common and ancient king’s highway, leading from the town of — in the said county, towards and unto — within the same county, used for all the king’s subjects, with their horses, coaches, carts and carriages, to go, return, and pass at their will; and that a certain part of the same king’s common highway, commonly called —, situate, lying, and being in the — of — in the same county, containing in length — yards, and in breadth — feet, on the — day of — in the — year of the reign of — and continually afterwards until the present day, was and yet is very ruinous, deep, broken, and in great decay, for want of due reparation and amendment, so that the subjects of the king, thro’ the same way, with their horses, coaches, carts, and carriages, could not during the time aforesaid, nor yet can go, return, or pass, as they ought and were wont to do; to the great damage and common nuisance of all the king’s subjects thro’ the same highway going, returning, or passing, and against the peace of our said lord the king: And that the inhabitants of the — of — aforesaid in the county aforesaid, the said common highway, so in decay, ought to repair and amend, when and so often as it shall be necessary. In testimony whereof, the said J. P. to these presents hath set his hand and seal, this — day of — in the year aforesaid.

Y. Warrant of distress for an assessment;

Middlesex. { To the constable &c.

WHEREAS by an assessment made upon the occupiers of lands, tenements, woods, tithes, and hereditaments, within the ----- of ----- in the said county, for the purposes of &c. [as stated in the justices order] pursuant to an order of justices for that purpose, according to the directions of the act passed in the thirteenth year of the reign of his majesty king George the third "For the amendment and preservation of the highways", A. O. was charged the sum of ----- as his share and proportion of the said assessment, in respect of the lands, tenements, woods, tithes, and hereditaments, which he occupied within the said ----- And whereas it appears to me upon the oath of ----- that the said sum of ----- hath been duly demanded from the said A. O. and that he hath refused to pay the same for the space of ten days after such demand made; These are therefore, in his majesty's name, to command you to levy the said sum of ----- by distress of the goods and chattels of the said A. O. And if the same shall not be paid within the space of four days next after such distress by you taken, together with the reasonable charges of taking and keeping the same, that you do then sell the said goods and chattels so by you distrained; and out of the money arising by such sale, that you do pay unto A. S. the surveyor of the highways for the said ----- of ----- the said sum of ----- to be employed for the purposes aforesaid; and that you do return the surplus thereof to the said A. O. the reasonable charges of taking, keeping, and selling the said distress being first deducted. And if sufficient distress cannot be found of the goods and chattels of the said A. O. wherein to levy the said sum of ----- that then you certify the same to me, together with this warrant. Given under my hand and seal the ----- day of ----- 1774.

a. Information against an offender.

Middlesex. **B**E it remembred, that on the ----- day of ----- 1774, A. I. of ----- in the said county informeth and maketh oath before me J. P. esquire, one of his majesty's justices of the peace for the said county, that A. O. of ----- in the said county [Here describe the offense]

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fence particularly, and follow the words of the act as near as may be] *contrary to the statute made in the thirteenth year of the reign of his majesty king George the third "For the amendment and preservation of the highways", which hath imposed a forfeiture of ----- for the said offence.*

A. I.

Taken and sworn the ----- day of
----- Before me J. P.

If it is on the Turnpike act, then say, ---- *contrary to the statute made in the thirteenth year of the reign of his majesty king George the third "For regulating the turnpike roads", &c.*

If it is for default in performing statute duty, then, in describing the offence, state the duty required, and the notice given for that purpose, and the neglect, according to the fact, and as near to the words of the act as may be.

b. Summons of an offender.

Middlesex. { To A. I. of -----

WHEREAS complaint and information hath been made upon oath before me J. P. esquire, one of his majesty's justices of the peace for the said county, by A. I. of ----- That [Here state the nature and circumstances of the case, as far as it shall be necessary to shew the offence, and to bring it within the authority of the justice, and in doing that, follow the words of the act as near as may be] *These are therefore to require you personally to appear before me (or, the justices to be assembled at their special sessions to be holden) at ----- in the said county, on the ----- day of ----- next, at the hour of ----- in the ----- noon, to answer to the said complaint and information made by the said A. I. who is likewise directed to be then and there present, to make good the same. Herein fail not. Given under my hand and seal, this ----- day of ----- 1774.*

c. Form of a conviction.

Middlesex. **B**E it remembred, that on the ----- day of ----- in the year of our lord 1774, at ----- in the county aforesaid, A. I. came before me J. P. esquire,

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esquire, one of his majesty's justices of the peace of the said county, and informed me, that A. O. of — on the — day of — now last past, at — in the said county, did [Here set forth the fact in the manner described by the statute] Whereupon the said A. O. after being duly summoned to answer the said charge, appeared before me on the — day of — at — in the said county, and having heard the charge contained in the said information, declared, that he was not guilty of the said offence: But the same being fully proved upon the oath of A. W. a credible witness, it manifestly appears to me the said justice, that he the said A. O. is guilty of the offence charged upon him in the said information. It is therefore considered and adjudged by me the said justice, that the said A. O. be convicted, and I do hereby convict him of the offence aforesaid; and I do hereby declare and adjudge that he the said A. O. hath forfeited the sum of — of lawful money of Great Britain, for the offence aforesaid, to be distributed as the law directs, according to the form of the statute in that case made and provided. Given &c.

If the party doth not appear upon the summons, then, after the words—being duly summoned to answer the said charge, insert, did not appear before me pursuant to the said summons; or, did neglect and refuse to make any defence against the said charge; but the same being fully proved, &c.

If the party confesses the charge, then, after the words—contained in the said information, insert, acknowledged and voluntarily confessed the same to be true, and it manifestly appears to me the said justice, &c.

d. Order for payment of a forfeiture.

Middlesex. WHEREAS A. O. of — in the said — is duly convicted before me J. P. esquire, one of his majesty's justices of the peace for the said county, for that he the said A. O. [Here describe the offence as set forth in the information] whereby he the said A. O. hath forfeited the sum of — I do therefore hereby order the said A. O. to pay to A. S. surveyor of the — the said sum of — to be by him disposed of as the law directs. Given under my hand and seal the — day of — 1774

e. Warrant

- e. Warrant of distress for a forfeiture. (Not to be issued till after six days from service of the order for payment.)

Middlesex. { To the constable of —

WHEREAS A. O. of — in the said county, yeoman, is duly convicted before me J. P. esquire, one of his majesty's justices of the peace in and for the said county, upon the oath of A. W. a credible witness, for that he the said A. O. hath [Here set forth the offence, describing it particularly in the words of the statute as near as may be] contrary to the statute in that case made and provided, by reason whereof the said A. O. hath forfeited the sum of — to be distributed as herein is mentioned, which he hath refused to pay: These are therefore, in his majesty's name, to command you to levy the said sum of — by distress of the goods and chattels of him the said A. O. And if within the space of four days next after such distress by you taken, the said sum, together with the reasonable charges of taking and keeping the same, shall not be paid, that then you do sell the said goods and chattels so by you distrained, and out of the money arising by such sale, that you do pay one half of the said sum of — to A. I. of — who informed me of the said offence, and the other half of the said sum of — to A. S. the surveyor of the highways for the — of — where the said offence (neglect, or, default) happened, to be employed towards the repair of the said highways [or as the case shall be], returning the overplus upon demand to him the said A. O. the reasonable charges of taking, keeping, and selling the said distress being first deducted. And if sufficient distress cannot be found of the goods and chattels of the said A. O. whereon to levy the said sum of — that then you certify the same to me, together with this warrant. Given under my hand and seal, the — day of — 1774.

If it is for a turnpike forfeiture, then say, — to A. S. surveyor of the turnpike road (describing it) — to be employed towards the repair of the said road —

f. Consta-

f. Constable's return of want of distress.

I A. C. constable of the — of — in the county of — do hereby certify and make oath, that by virtue of this warrant, I have made diligent search for the goods of the within named — and that I can find no sufficient goods whereon to levy the within sum of — As witness my hand the — day of — 1774.

*Sworn before me the
day and year &c. J. P.*

A. C.

g. Commitment for want of distress.

Middlesex. { To the constable of — in the said county,
and to the keeper of the common gaol
[or, house of correction] at — in the
said county.

WHEREAS A. O. of — in the said county, yeoman, was on the — day of — convicted before me J. P. esquire, one of his majesty's justices of the peace in and for the said county, upon the oath of A. W. a credible witness, for that he the said A. O. [Here set forth the offence] contrary to the statute made in the thirteenth year of the reign of his majesty king George the third "For the amendment and preservation of the highways" [If it is a turnpike offence, then say, "For regulating the turnpike roads"] by reason whereof the said A. O. hath forfeited the sum of — And whereas on the — day of — in the year aforesaid, I did issue my warrant to the constable of — to levy the said sum of — by distress and sale of the goods and chattels of him the said A. O. and to distribute the same according to the directions of the said statute: And whereas it duly appears to me upon the oath of the said (constable) that he the said — hath used his best endeavours to levy the said sum on the goods and chattels of the said A. O. as aforesaid, but that no sufficient distress can be had whereon to levy the same: These are therefore to command you the said constable of — aforesaid, to apprehend the said A. O. and him safely to convey to the common gaol [or, house of correction] at — in the said county, and there deliver him to the keeper thereof, together with this precept. And I do hereby also command you the said keeper, to receive and keep in your custody the said A. O. for

the space of three months, unless the said sum shall be sooner paid, pursuant to the said conviction and warrant; and for so doing this shall be your sufficient warrant. Given under my hand and seal the — day of — in the year of our lord

In case of a commitment for want of payment of money due on an assessment, it must be, — to receive and keep in your custody, until he shall have paid the said sum of — and the further sum of — being the costs and charges occasioned by his neglect in paying the same.

h. Notice of appeal.

A. B. Take notice, that I intend to appeal to the next general quarter sessions of the peace, to be holden for the county of — against an order [conviction, or other proceeding as the case may be, particularly specifying the purport of such order, &c. and assigning the grievance and cause of complaint.] Dated the — day of — 1774.

C. D.

i. Order of turnpike trustees for erecting a weighing engine.

A T a meeting of the trustees under an act passed in the — year of the reign of — for [Here recite the principal part of the title of the particular act] held at — the — day of — 1774.

In pursuance of the powers given to us by an act passed in the thirteenth year of the reign of his majesty king George the third "for regulating the turnpike roads," we do hereby order, that an engine proper for the weighing of carriages, of the constructions and weights specified in the said act, be forthwith erected at or as near as conveniently may be to the toll gate or bar now erected upon the said turnpike road at — and that A. B. the treasurer (clerk, or, surveyor) of the said turnpike road do contract with some proper person (or, with C. D. in case the trustees shall think fit to name the person) for the making and erecting such engine, and do inspect and take care that the same is properly done. And we do order the gate keeper at the said gate or bar for the time being to attend the said weighing engine, and carefully to weigh all carriages passing, loaded upon the said road, at the place where

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where such engine shall be erected, together with the loading thereof, and to take the several additional tolls or rates for overweight, and give tickets of the weight of such carriages and loading, when required by the driver thereof, according to the directions of the said act; and also to enter in a separate book, to be kept by him for that purpose, an account of every carriage so weighed, which shall, with the loading, exceed the weights allowed by the said act, and account to us for the money received for all such overweight. Given under our hands ———

k. Allowance of an increased number of horses drawing up a steep hill.

AT a meeting of the trustees of a turnpike road, under an act passed in the ——— year of the reign of ——— for [Here state the principal part of the title of the act] held at ——— the ——— day of ——— 1774.

It appearing to us, upon the oath of ——— being a person experienced in levelling, that the rise of part of a certain hill, upon the said turnpike road, lying in the parish of ——— called or known by the name of ——— between the post marked "Put on", and the post marked "Take off", being ——— yards in length, is above four inches in a yard; we do hereby allow to be drawn up the said hill, between the posts abovementioned, waggons having the soles or bottom of the fellies of the wheels of the breadth of 9 inches with ——— horses, and carts having the like wheels with ——— horses; and waggons having wheels of the breadth of 6 inches with ——— horses, and carts having the like wheels with ——— horses; and waggons having wheels of less breadth than 6 inches with ——— horses, and carts having the like wheels with ——— horses.

If the whole rise be upon an average more than 4 inches in a yard, then say, — that the rise of a certain hill — is upon an average above four inches —

l. Certificate thereof to the sessions.

IA. C. clerk to the trustees mentioned in the above order, do hereby certify to the justices of the peace for the ——— of ——— at their general quarter sessions of the peace, that the above is a true copy of the order made by the said trustees for the purposes therein mentioned. Dated this ——— day of ——— 1774.

m. Notice

m. Notice of contracting for materials.

NOTICE is hereby given, that A. S. surveyor of the turnpike road lying between — and — will, on the — day of — next, at the hour of — in the — noon, let the getting of — cart loads of gravel, [or, — of stone], to be got at a pit at — for the use of the said turnpike road, and will also let the carriage of the said gravel [or stone] from the said pit to — where the same is to be used and employed upon the said turnpike road. And all persons desirous of entering into a contract with the said surveyor, either for getting or carrying the said materials, are desired to attend at the time and place before mentioned. Dated this — day of — 1774.

n. Agreement with persons obliged to particular repairs.

AT a meeting of the trustees of the turnpike roads under an act passed in the — year of the reign of — for [Here state the principal part of the title of the act] held at — the — day of — 1774.

Whereas A. B. of — is liable by tenure (or as the case shall be) to the repair of a certain highway leading between — and — of the length of — yards or thereabouts, and the said highway being now made turnpike road by virtue of the said act, will occasion a greater expence to make and keep the same in proper repair, than would have been necessary if no such act had been obtained; and the said A. B. attending this meeting in person (or, by C. D. his attorney or agent authorized to treat in that behalf), the said trustees and the said A. B. &c. in pursuance of a power given by an act passed in the 13th year of the reign of king George the third "For regulating turnpike roads" have, in order to put and keep the said road in proper condition and repair, come to the following agreement, viz. That the said trustees shall, on or before the — day of — next, pay and allow the sum of — out of the tolls arising upon the said turnpike roads, towards putting the said road into proper repair, to be laid out and expended by the surveyor of the said turnpike road; and that the said A. B. shall advance and pay into the hands of the treasurer of the said turnpike

turnpike road, on or before the — day of — next, the sum of — to be also laid out and expended by the said surveyor in the repair of the said road: And that from and after the — day of — next, the said turnpike road shall be kept in repair by the said trustees out of the said tolls as aforesaid, so long as the said turnpike act shall continue, upon the said A. B. paying into the hands of their treasurer the sum of — upon the — day of — every year; which the said A. B. doth hereby for himself and his heirs agree to pay accordingly, so long as the said road shall be so repaired by the said trustees as aforesaid.

Or the same precedent may be varied according to circumstances.

o. Order for the repair of a new highway.

Middlesex. **W**E two of his majesty's justices of the peace for the said county, acting within the (hundred) of — in the said county, having (at the request of the parties interested in the repair of part of the highway [or, turnpike road] hereafter mentioned, who could not agree about the repair thereof) viewed a certain part of the highway (or, turnpike road) described in the plan hereunto annexed, of the length of — yards, which hath been set out and appropriated for a new highway (or, turnpike road) between — and — in lieu of an old highway (or, turnpike road) which hath been ordered to be stopped up; and having also viewed the ground where the said old highway was situated, and having summoned the surveyor of the said new highway (or, turnpike road), and also A. B. who was liable by tenure, &c. [If the old road laid in a different parish, and was to be repaired by the inhabitants, then say, and also the surveyor of the parish of — where the said old road lay, who were liable to the repair of the said old highway (or, turnpike road)] to appear before us this day; and having heard what has been alledged touching the repair of the said part of the said highway (or, turnpike road), and having fully considered the same, and all the circumstances of the case; We think it just and reasonable, and do hereby order and adjudge, that the said A. B. (or, the inhabitants of the said parish &c.) shall from time to time repair, and keep in repair, the whole (or, a part) of the said highway, from — to — containing — yards in length, at each end whereof we have caused a post, or stone, to be placed, to ascertain the extent thereof. Given under our hands and seals this — day of — 1774: If

If it be agreed by the consent of parties; to pay a sum in gross in lieu of such repairs, then, after the word *adjudge*, insert, *by and with the consent of the said A. B. signified by his subscribing his name to this order* (or, *by the consent of the inhabitants of the said parish of ——— signified in writing at a vestry or other public meeting, a copy whereof is here under written*) that the said A. B. (or, the inhabitants ———) is (or, are) liable to repair part of the said new highway; and that if he (or, they) shall, on or before the ----- day of ----- next, pay to the surveyors of the highways of the said parish of ——— [if it is not turnpike road; but if it be turnpike road, then say, to the treasurer of the said turnpike road] the sum of ——— he the said A. B. and his heirs (or, the said inhabitants and their successors) shall be for ever acquitted and discharged from the burden and obligation to repair the said new highway or any part thereof.

p. Agreement of the inhabitants to pay a gross sum, to be discharged from the repair of a particular road.

WE whose names are subscribed, being a majority of the inhabitants of the ——— of ——— assembled this ——— day of ——— at a vestry or public meeting held pursuant to notice duly given, for the purposes of consulting about an agreement to be made concerning the repair of part of a highway (or, turnpike road) within the said ——— of ——— do consent and agree to pay the sum of ——— to be absolutely exonerated and discharged from all future repairs of the said highway (or, turnpike road). ——— If an annual payment be agreed upon, then say, to pay annually the sum of ———

q. Order for transferring statute turnpike duty to other roads.

Middlesex. AT a special sessions held by justices of the peace for the said county, acting in the hundred of ——— within the said county, at ——— on the ——— day of ——— 1774.

Whereas application and complaint upon oath hath been made unto us, by A. B. surveyor of the (parish, &c.) of ——— that the several highways, not being turnpike, within the said ——— are very extensive, and in bad repair, and that a considerable part of the statute duty arising within the said

— bath been called forth, and required to be applied in the repair of certain turnpike roads lying within the said — which are in good condition, and have a considerable revenue for their support, arising from the tolls collected thereupon: And we having duly summoned C. D. the surveyor of the said turnpike road, to appear before us, to shew cause why the said statute duty, called forth and applied by him to the repair of the said turnpike road, should not be withdrawn therefrom, and applied to the repair of the other highways within the said —; and upon hearing the said C. D. and receiving an account of the revenues and debts of the said turnpike road, and of the state and condition of the repair of the said turnpike road and highway respectively; and it appearing to us, upon full consideration had thereupon, that part of the statute duty hitherto employed by the said — for the repair of the said turnpike road, may be conveniently dispensed with, without indangering the securities for the money advanced upon the credit of the tolls thereof; and that such statute duty is wanted for the repairs of the other highways within the said —; we, in pursuance of the power given to us by the act passed in the thirteenth year of the reign of king George the third. “For regulating turnpike roads”, do order, that from and after the — day of — next, there shall be only — days statute duty performed by the inhabitants of the said — upon the said turnpike road within the same, and that the remainder of the statute duty shall be performed upon the other highways within the said —

r. Notice for letting tolls.

NOTICE is hereby given, that the tolls arising at the toll gate upon the turnpike road at — called or known by the name of the — gate, will be let by auction to the best bidder, at the house of — at — on the — day of — next, between the hours of — and — in the manner directed by the act passed in the thirteenth year of the reign of his majesty king George the third. “For regulating the turnpike roads”; which tolls produced the last year the sum of — above the expences of collecting them, and will be put up at that sum. Whoever happens to be the best bidder must at the same time give security, with sufficient sureties, to the satisfaction of the trustees of the said —

said turnpike road, for payment of the rent agreed for, and at such times as they shall direct.

A. C. clerk to the trustees of the said turnpike road.

Highwaymen. See Robbery.

Homicide.

HOMICIDE in law signifies the killing of a man by a man. 1 Haw. 66.

And it includes in it, not only petit treason, concerning which see title **Treason**; but also the several offences which are treated of in the following sections.

There is also another kind of untimely death of a man, not properly homicide: When he is killed by a horse, a cart, a tree, or the like, and not by a man; which is called casual death; for which see title **Decorum**.

I. Justifiable homicide.

II. Homicide by misadventure.

III. Homicide by self defence.

IV. Manslaughter.

V. Murder.

VI. Self-murder.

I. Justifiable homicide.

I. To make homicide justifiable, it must be owing to some unavoidable necessity, to which the person who kills another must be reduced, without any manner of fault in himself. 1 Haw. 69.

And there must be no malice coloured under pretence of necessity; for wherever a person who kills another, acts in truth upon malice, and takes occasion from the appearance of necessity to execute his own private revenge, he is guilty of murder. 1 Haw. 69.

G g 2

2. If

Killing robbers
and burglars.

2. If any evil disposed person shall attempt feloniously to rob or murder any person in any dwelling house or highway, or feloniously attempt to break any dwelling house in the night time, and shall happen in such felonious intent to be slain; the slayer shall be discharged, and shall forfeit no lands nor goods. 24 H. 8. c. 5.

Trespassers in
parks.

3. If trespassers in a forest, chase, park, or warren, or any inclosed ground wherein deer are kept, will not render themselves to the keepers, upon a hue and cry made to stand to the king's peace, but fly from, or defend themselves against them, they may be slain by them. 1 Haw. 71.

Rioters.

4. If rioters, or forcible enterers or detainers, stand in opposition to the justices lawful warrant, and any of them is slain; it is no felony. *Hale's Pl.* 37.

Houseburners.

5. If a man comes to burn my house, and I shoot out of my house, or issue out of my house, and kill him; it is no felony. *Hale's Pl.* 39.

Ravishers.

6. If a woman kill him that assaulteth to ravish her; it is no felony. *Hale's Pl.* 39.

Felons refusing
to be arrested.

7. If a person having actually committed a felony, will not suffer himself to be arrested, but stand on his own defence, or fly, so that he cannot possibly be apprehended alive by those who pursue him, whether private persons, or publick officers, with or without a warrant from a magistrate; he may be lawfully slain by them. 1 Haw. 70.

Suspected felon
refusing to be
arrested.

8. So if a felony hath actually been committed, and an officer or minister of justice, having lawful warrant so to do, arrest an innocent person, and such person assault the officer or minister of justice; the officer is not bound by law to give back, but to carry him away; and if in execution of his office, he cannot otherwise avoid it, but in striving kill him, it is no felony. And in that case, the officer or minister of justice shall forfeit nothing; but the party so assaulting, or offering to fly away, and is killed, shall forfeit his goods. 3 Inst. 56.

Felon escaping.

9. Also if a person arrested for felony, break away from his conductors to gaol, they may kill him, if they cannot otherwise take him. But in this case likewise, there must have been a felony actually committed. *Hale's Pl.* 36, 37.

Felon breaking
gaol.

10. Also if a criminal endeavouring to break the gaol, assault his gaoler, he may be lawfully killed by him in the affray. 1 Haw. 71.

11. In

11. In civil causes: Although the sheriff cannot kill a man who flies from the execution of a civil process; yet if he resist the arrest, the sheriff or his officer need not give back, but may kill the assailant. *Hale's Pl.*

Resisting a civil process.

37.

So if in the arrest and striving together, the officer kill him, it is no felony. *Hale's Pl.* 37.

12. In all these cases the party upon arraignment having pleaded not guilty, the special matter must be found; whereupon the party shall be dismissed, without any forfeiture, or pardon purchased. *Hale's Pl.* 38.

Trial and discharge.

II. Homicide by misadventure.

1. I have purposely avoided the word *chancemedley* in this place, because authors do not seem to be agreed whether it is to be applied to homicide by *misadventure*, or to *manslaughter*. *Ld. Coke* and *Mr. Hawkins* seem to understand it of *manslaughter*; *Ld. Hale*, and others, of homicide by *misadventure*. The original meaning of the word seems to favour the former opinion, as it signifies a sudden or casual meddling or contention; whereas homicide by *misadventure* supposeth no previous meddling or falling out. But the same author sometimes in different places, applies it to both of them promiscuously.

Chancemedley.

2. Homicide by *misadventure* is, where a man is doing a lawful act, without intent of hurt to another, and death casually ensues. *Hale's Pl.* 31.

What is homicide by misadventure.

3. As where a labourer being at work with a hatchet, the head flies off, and kills one who stands by. *1 Haw.*

Cases of homicide by misadventure.

73.

4. Or where a third person whips a horse; on which a man is riding, whereupon he springs out and runs over a child, and kills him; in which case the rider is guilty of homicide by *misadventure*, and he who gave the blow of *manslaughter*. *1 Haw.* 73.

5. But if a person riding in the street whip his horse to put him into speed, and run over a child and kill him, it is homicide and not by *misadventure*; and if he ride so, in a press of people, with intent to do hurt, and the horse killeth another, it is murder in the rider. *1 H. H.*

476.

6. If a person drives his cart carelessly, and it runs over a child in the street, if he have seen the child, and yet drives on upon him, it is murder; but if he saw not the

child,

child, yet it is manslaughter; but if the child had run cross the way, and the cart run over the child before it was possible for the carter to make a stop, it is by misadventure. 1 H. H. 476.

7. So where workmen throw stones, rubbish, or other things, from an house, in the ordinary course of their business, by which a person underneath happens to be killed; if they look out and give timely warning to those below, it will be homicide by misadventure; if without such caution, it will amount to manslaughter at least, it was a lawful act, but done in an improper manner. It is said by some, that if this be done in the streets of London, or other populous towns, it will be manslaughter notwithstanding the caution above mentioned. But this will admit of some limitation. If it be done early in the morning, when few or no people are stirring, and the ordinary caution is used, it seemeth that the party is excusable. But when the streets are full, that will not suffice; for in the hurry and noise of a crowded street, few people hear the warning, or sufficiently attend to it. *Fest.* 262, 263.

8. It is said before, that this homicide is only when it happeneth upon a man's doing a lawful act; for if the act be unlawful, it is murder. As if a person, meaning to steal a deer, in another man's park, shooteth at the deer, and by the glance of the arrow killeth a boy, that is hidden in a bush; this is murder, for that the act was unlawful, altho' he had no intent to hurt the boy, nor knew of him. But if the owner of the park had shot at his own deer, and without any ill intent had killed the boy by the glance of his arrow, this had been homicide by misadventure, and no felony. 3 *Inst.* 56.

9. So if any one shoot at any wild fowl upon a tree, and the arrow killeth any reasonable creature afar off, without any evil intent in him, this is by misadventure; for it was not unlawful to shoot at the wild fowl. But if he had shot at a cock or a hen, or any tame fowl of another man's, and the arrow by mischance had killed a man; if his intention was to steal the poultry (which must be collected from circumstances), it will be murder by reason of that felonious intent; but if it was done wantonly, and without that intention, it will be barely manslaughter. *Fest.* 258, 9.

10. The rule before laid down supposeth, that the act from which death ensued, was *malum in se*. For if it was barely *malum prohibitum*, as shooting at game by a person

person not qualified by statute law to keep or use a gun for that purpose; the case of a person so offending, will fall under the same rule as that of a qualified man. For the statutes prohibiting the destruction of the game, under certain penalties, will not in a question of this kind enhance the accident beyond its intrinsic moment. *Foff. 259.*

11. Further, if there be an evil intent, tho' that intent extendeth not to death, it is murder. Thus, if a man, knowing that many people are in the street, throw a stone over a wall, intending only to fright them, or to give them a little hurt, and thereupon one is killed, this is murder; for he had an ill intent, tho' that intent extended not to death, and tho' he knew not the party slain. 3 *Inst. 57.*

12. And it is a general rule, in case of all felonies, that wherever a man intending to commit one felony, happens to commit another, he is as much guilty as if he had intended the felony which he actually commits. 1 *Haw. 74.*

13. But in all the cases above, if it doth only hurt a man, by such an accident, it is nevertheless a trespass; and the person hurt shall recover his damages; for tho' the chance excuse from felony, yet it excuseth not from trespass. 1 *H. H. 472.*

14. If a person escape that hath killed another by misadventure, the town shall be amerced. 2 *Inst. 149.*

15. This homicide is not felony, because it is not accompanied with a felonious intent, which is necessary in every felony. 1 *Haw. 75.*

16. But yet a person guilty thereof is not bailable by justices of the peace, but must be committed to the assizes. 1 *Haw. 75.*

But if he is taken only on a slight suspicion, the justices of the peace may bail him. 2 *Haw. 105.*

17. Altho' this homicide is not properly a man's crime, but his misfortune; yet because the king hath lost his subject, and in respect of the great favour the law hath to the life of man, and to the end that men should use all care, diligence, and circumspection in all they do, that no hurt should come of their actions, a person convicted hereof shall forfeit his goods, and shall not presently be discharged of his imprisonment, but bailed, that he may sue out his pardon; which he shall have out of the chancery of course. 1 *H. H. 477, 492.* 1 *Haw. 76.*

III. Homicide by self-defence.

Se defendendo,
what.

Cases of *se de-*
sendendo.

1. Homicide in a man's own defence seems to be, where one who hath no other possible means of preserving his life from one who combats with him on a sudden quarrel, kills the person by whom he is reduced to such an inevitable necessity. 1 *Haw.* 75.

2. And not only he, who upon an assault retreats to a wall, or some such strait, beyond which he can go no farther, before he kills the other, is judged by the law to act upon unavoidable necessity; but also he, who being assaulted in such a manner, and in such a place, that he cannot go back without manifestly endangering his life, kills the other without retreating at all. 1 *Haw.* 75.

3. And notwithstanding a person who retreats from an assault to the wall, give the other wounds in his retreat, yet if he give him no mortal one till he get thither, and then kill him, he is guilty of homicide *se defendendo* only. 1 *Haw.* 75.

4. But if the mortal wound was first given, then it is manslaughter. *Hale's Pl.* 42.

5. And an officer who kills one that resists him in the execution of his office, and even a private person that kills one who feloniously assaults him in the highway, may justify the fact, without ever giving back at all. 1 *Haw.* 75.

6. But if a person upon malice *prepenſe* strike another, and then fly to the wall, and there in his own defence kills the other, this is murder. *Hale's Pl.* 42.

Accessaries.

7. Hereof there can be no accessaries, either before or after the act, because it is not done with a felonious intent, but upon inevitable necessity. 3 *Inst.* 56.

Escape.

8. If a man escape, that hath killed another in his own defence, the town shall be amerced. 2 *Inst.* 315.

Bail.

9. A person guilty hereof is not bailable by justices of the peace; but they must commit him till the assizes. 1 *Haw.* 76.

Power of justices
of the peace.

But otherwise it is, if he is taken only on slight suspicion. 2 *Haw.* 105.

10. Lord Coke (2 *Inst.* 316.) says, that the justices of the peace cannot take an indictment of killing a man *se defendendo*; because their commission is not general, as is that

that of the justices of gaol delivery, but limited: But lord Hale (2 H. H. 46.) holds the contrary.

11. A person convicted hereof, shall not be discharged Forfeiture, out of prison but upon bail, and shall forfeit all his goods, altho' the cause was inevitable. And this because of the great regard which the law hath for the life of man; and also by reason that the law intends it had a beginning upon an unlawful cause: for quarrels are not presumed to grow without some wrongs in words or deeds, and so malice on both sides. But he shall have his pardon out of the chancery of course. 3 Inst. 56. 1 Haw. 76.

12. If a man be indicted for homicide *se defendendo*, and Flight, is found not guilty, yet if it be found that he fled for the same, he shall forfeit his goods for such flight, in not standing to the law of the land. 1 H. H. 493.

IV. Manslaughter.

1. By manslaughter is to be understood such killing of Manslaughter, a man as happens either on a sudden quarrel, or in the what, commission of an unlawful act, without any deliberate intention of doing any mischief at all. 1 Haw. 76.

2. There is no difference between murder and man- Without malice, slaughter, but that murder is upon malice forethought, and manslaughter upon a sudden occasion. As if two meet together, and striving for the wall, the one kill the other, this is manslaughter and felony. And so it is, if they had upon that sudden occasion gone into the field and fought, and the one had killed the other, this had been but manslaughter, and no murder; because all that followed was but a continuance of the first sudden occasion, and the blood was never cooled, till the blow was given. 3 Inst. 55.

3. There can be no accessaries to this offence before Accessaries, the fact, because it must be done without premeditation. 1 Haw. 76.

But there may be accessaries after the fact. 3 Inst. 55.

4. This offence is notailable by justices of the peace. Bail, 3 Ed. 1. c. 15.

5. It is within the benefit of clergy; but the offender Clergy. shall forfeit as in other felonies. 2 H. H. 344.

6. But there is one kind of manslaughter, which by Stabbing, the statute of the 1 J. c. 8. is excluded the benefit of clergy; viz. He who shall stab or thrust any person that hath not then any weapon drawn, or hath not then stricken first,

first, so as the person so stabbed or thrust shall die thereof in six months, altho' it cannot be proved that the same was done of malice forethought, shall be guilty of felony without benefit of clergy.

V. Murder.

Murder, what.

1. Murder is, when a man of sound memory, and of the age of discretion, unlawfully killeth any person under the king's peace, with malice forethought, either expressed by the party, or implied by law; so as the party wounded or hurt, die of the wound or hurt, within a year and a day. 3 Inst. 47.

Cases of murder.

2. By *malice expressed*, is meant, a deliberate intention of doing any bodily harm to another, whereunto by law a person is not authorized. 1 H. H. 154.

And the evidences of such a malice must arise from external circumstances discovering that inward intention; as lying in wait, menacings antecedent, former grudges, deliberate compassings, and the like; which are various, according to variety of circumstances. 1 H. H. 451.

3. *Malice implied* is in several cases; as when one voluntarily kills another, without any provocation; for in this case the law presumes it to be malicious; and that he is a publick enemy of mankind. 1 H. H. 455, 456.

4. Poisoning also implies malice, because it is an act of deliberation. 1 H. H. 455.

5. Also when an officer is killed in the execution of his office, it is murder, and the law implies malice. 1 H. H. 457.

6. Also where a prisoner dieth by duress of the gaoler, the law implies malice, by reason of the cruelty. 3 Inst. 52.

7. And in general, any formed design of doing mischief may be called malice, and therefore not such killing only as proceeds from premeditated hatred or revenge against the person killed, but also in many other cases; such as is accompanied with those circumstances that shew the heart to be perversely wicked, is adjudged to be of malice *prepense*, and consequently murder. 2 Haw. 80. Strange 766.

For when the law makes use of the term *malice aforethought*, as descriptive of the crime of murder, it is not to be understood in that narrow restrained sense to which the modern use of the word *malice* is apt to lead one,

one, a principle of malevolence to particulars; for the law by the term *malice* (*malitia*) in this instance meaneth, that the fact hath been attended with such circumstances, as are the ordinary symptoms of a wicked heart, regardless of social duty, and fatally bent upon mischief. *Foff. 256, 7.*

8. And wherever it appears that a man killed another, it shall be intended *prima facie* that he did it maliciously, unless he can make out the contrary, by shewing that he did it on a sudden provocation, or the like. *1 Haw. 82.*

9. Also wherever a person in cool blood, by way of revenge, beats another in such a manner that he afterwards dies thereof, he is guilty of murder, however unwilling he might have been to have gone so far. *1 Haw. 83.*

10. And it seems to be agreed, that no breach of a man's word or promise, no trespass either to lands or goods, no affront by bare words or gestures, however false or malicious it may be, and aggravated with the most provoking circumstances, will excuse him from being guilty of murder, who is so far transported thereby, as immediately to attack the person who offends him, in such a manner as manifestly endangers his life, without giving him time to put himself upon his guard, if he kills him in pursuance of such an assault, whether the person slain did at all fight in his defence or not. *1 Haw. 82.*

11. If a man by harsh and unkind usage put another into such a passion of grief or fear, that the party either die suddenly, or contract some disease whereof he dies, though this may be murder or manslaughter in the sight of God, yet in a human judicature it cannot come under the judgment of felony, because no external act of violence was offered, whereof the law can take notice. *1 H. H. 429.*

12. If two fall out upon a sudden occasion, and agree to fight in such a field, and each of them go and fetch their weapon, and go into the field, and therein fight, and the one killeth the other, this is no malice presumed; for the fetching of the weapon, and going into the field, is but a continuance of the sudden falling out, and the blood was never cooled. But if there were deliberation, as that they meet the next day, nay though it were the same day, if there were such a competent distance of time, that in common presumption, they had time

time of deliberation, then it is murder. 3 *Inst.* 51. 1 *H. H.* 453.

13. And the law so far abhors all duelling in cold blood, that not only the principal who actually kills the other, but also his seconds, are guilty of murder, whether they fought or not. And it is holden, that the seconds of the party slain are likewise guilty as accessories. 1 *Haw.* 82.

14. If a physician or surgeon gives a person a potion, without any intent of doing him any bodily harm, but with intent to cure or prevent a disease, and contrary to the physician or surgeon's expectation it kills him, this is no homicide. And lord *Hale* says, he holds their opinion, to be erroneous, who think that if he be no licensed surgeon or physician, that occasioneth this mischance, that then it is felony. These opinions (he says) may caution ignorant people not to be too busy in this kind in tampering with physick, but are no safe rule for a judge or jury to go by. 1 *H. H.* 429.

15. But if a woman be with child, and any gives her a potion to destroy the child within her, and she take it, and it works so strongly that it kills her, this is murder; for it was not given her to cure her of a disease, but unlawfully to destroy the child within her; and therefore he that gives her a potion to this end, must take the hazard, and if it kills the mother it is murder. 1 *H. H.* 430.

16. Also if a woman be quick with child, and by a potion or otherwise, killeth it in her womb; or if a man beat her, whereby the child dieth in her body, and she is delivered of a dead child, this is a great misprision, but no murder: but if the child be born alive, and dieth of the potion, battery, or other cause, this is murder. 3 *Inst.* 50.

Lord *Hale* says, that in this case it cannot legally be known, whether the child were killed or not; and that if the child die, after it is born and baptized, of the stroke given to the mother, yet it is not homicide. 1 *H. H.* 433. And Mr. *Dalton* says, whether it die within her body, or shortly after her delivery, it maketh no difference. *Dalt.* 332. But Mr. *Hawkins* says, that (in this latter case) it seems clearly to be murder, notwithstanding some opinions to the contrary. 1 *Haw.* 80.

17. Also it seems agreed, that where one counsels a woman to kill her child when it shall be born, who afterwards

wards doth kill it in pursuance of such advice, he is an accessory to the murder. 1 Haw. 80.

18. By the 21 J. c. 27. If a woman be delivered of a bastard child, and she endeavour privately, either by drowning or secret burying thereof, or any other way, either by herself, or the procuring of others, so to conceal the death thereof, as that it may not come to light, whether it were born alive or not, but be concealed; she shall suffer death as in case of murder, except she can prove by one witness that it was born dead.

19. Lord Hale says, if a man have a beast, as a bull, cow, horse, or dog, used to hurt people, and he hath notice thereof, and it doth any body hurt, he is chargeable with an action for it:

If he have no particular notice that it did any such thing before, yet if it is *feræ naturæ*, as a lion, a bear, a wolf, yea an ape, or a monkey, if it get loose and do harm to any person, the owner is liable to an action for the damage:

If he have notice of the quality of any such his beast, and use all due diligence to keep him up, yet he breaks loose and kills a man, this is no felony in the owner, but the beast is a deodand:

But if he did not use that due diligence, but through negligence the beast goes abroad, after warning or notice of his condition, and kills a man, he thinks it is manslaughter in the owner:

But if he did purposely let him loose or wander abroad, with design to do mischief, nay though it were with design only to fright people and make sport, and it kills a man, it is murder in the owner. 1 H. H. 431.

20. They that are present when any man is slain, and do not their best endeavour to apprehend the murderer or manslayer, shall be fined and imprisoned. 3

Persons present when murder is committed.

Inst. 53.

21. If a murder be committed in the day time, in a town not inclosed, and the murderer escape, the township shall be amerced: but if inclosed, whether the murder be in the night or day, the town shall be amerced.

3 Inst. 53.

22. Where any person shall be feloniously stricken or poisoned in one county, and die in another county; the offender may be indicted in the county where the party dies, before the coroner, justices of the peace, or other justices. 2 & 3 Ed. 6. c. 24. f. 2.

Where the stroke is in one county, and the death in another.

23. Where

Where the principal committeth the offence in one county, and the accessory in another.

Where the stroke is in England, and the death out of England; and vice versa.

Trial, when.

Judgment.

How to be demeaned after judgment.

23. Where a murder is committed in one county, and a person is accessory in another county, he may be indicted in the county where he was accessory, on certificate of the conviction of the principal in the county where he committed the murder. 2 & 3 Ed. 6. c. 24. s. 4.

24. If any person be feloniously stricken or poisoned upon the sea, or out of England, and shall die of the same in England; or shall be feloniously stricken or poisoned in England; and shall die of the same on the sea, or out of England; the offenders and accessories may be indicted in the county where any such death, stroke, or poisoning shall happen, before the coroner, justices of the peace, or other justices; and the judges of assize, or any superior court, to which the indictment shall be removed, shall proceed thereon accordingly. 2 G. 2. c. 21.

25. If any man be slain or murdered, and the slayers, murderers, and accessories be indicted, they may be tried at any time within the year, and not tarry the year and day for an appeal: but if upon trial they are acquitted, they shall not be suffered to go at large, but be committed or bailed, till the year and day be past: and an appeal may be brought, notwithstanding such acquittal on indictment, if he hath not had his clergy. 3 H. 7. c. 1.

26. Sentence, in case of murder, shall be pronounced in open court immediately after conviction, unless the court shall see reasonable cause for postponing the same; in which shall be expressed not only the usual judgment of death, but also the time appointed for execution, and the marks of infamy directed for such offenders. 25 G. 2. c. 37. s. 3.

27. And after conviction and judgment, the gaoler shall confine the prisoner to some cell, or other proper and safe place in the prison, apart from the other prisoners; and no person, except the gaoler, or his servants, shall have access to him, without a licence from the judge, sheriff, or under sheriff. But if the judge shall see cause to respite the execution, he may, during the time of such stay, relax, or release, by licence under his hand, any or all of the restraints or regulations before directed to be observed by the gaoler. 25 G. 2. c. 37. s. 6, 7.

And after sentence, and until execution, the offender shall be fed with bread and water only (except in case of receiving the sacrament; or of any violent sickness or wound, in which case some known physician, surgeon, or apothecary may be admitted by the gaoler to administer

necessaries,

necessaries, his name and place of abode being first entred in the books of such prison). And if the gaoler shall offend against, or neglect to put in execution, any of the said directions; he shall forfeit his office, and be fined 20 l. and imprisoned till paid. *id.* f. 8.

28. The execution of persons found guilty of wilful murder, shall be on the day next but one after sentence passed, unless it be *sunday*, and in that case on the *monday* following. 25 G. 2. c. 37. f. 1.

But if there shall appear reasonable cause, the judge after sentence pronounced, may stay the execution at his discretion. *id.* f. 4.

29. And if any person shall by force set at liberty or rescue, or attempt to set at liberty, or rescue, any person out of prison, committed for, or found guilty of murder; or rescue, or attempt to rescue any such person going to, or during execution; he shall be guilty of felony without benefit of clergy. 25 G. 2. c. 37. f. 9.

30. The body, if in *London* or *Middlesex*, shall be immediately conveyed by the sheriff, to the surgeons hall, or such other place as the surgeons company shall appoint, to be by them dissected and anatomized; and if elsewhere, shall be delivered to such surgeon as the judge shall direct, for the purpose aforesaid. 25 G. 2. c. 37. f. 2.

Body not to be buried.

And the judge may direct the body to be hung in chains, or anatomized; but in no case whatsoever to be buried, unless after the same shall have been dissected and anatomized. f. 5.

At a meeting of the judges to consider of this act, there was some doubt whether hanging in chains might ever be made part of the sentence; but on debate it was agreed by nine judges, that in all cases within the act, the judgment for dissection and anatomizing only should be part of the sentence; and if it should be thought adviseable, the judge might afterwards direct the hanging in chains by special order to the sheriff, pursuant to the power given by this clause. *Fol.* 107.

31. And if after execution, any person shall by force rescue, or attempt to rescue the body; he shall be guilty of felony, and transported for seven years. 25 G. 2. c. 37. f. 10.

Rescuing the body.

32. The principal in murder is ousted of clergy in all cases, and the accessory before is also ousted of clergy in all cases, but the accessory after is in no case ousted of clergy. 2 H. H. 344.

How far the accessory shall have his clergy.

Navy,

33. All murders committed by any person in the fleet shall be punished with death, by the sentence of a court martial. 22 G. 2. c. 33. art. 28.

VI. Self-Murder.

Felo de se.

1. *A felo de se*, or felon of himself, is a person, who being of sound mind, and of the age of discretion, voluntarily killeth himself. 3 Inst. 54. 1 H. H. 411.

Year and day.

2. If a man give himself a wound, intending to be *felo de se*, and dieth not within the year and day after the wound, he is not *felo de se*. 3 Inst. 54.

Non compos.

3. Mr. *Hawkins* speaks with some warmth against an unaccountable notion (as he calls it) which hath prevailed of late, that every one who kills himself must be *non compos* of course; because it is said to be impossible, that a man in his senses should do a thing so contrary to nature, and all sense and reason. But he argues, that if this doctrine were allowable, it might be applied in excuse of many other crimes as well as this; as for instance that of a mother murdering her child, which is also against nature and reason: and this consideration, instead of being the highest aggravation of a crime, would make it no crime at all; for it is certain a person *non compos mentis* can be guilty of no crime. 1 Haw. 67.

And lord *Hale* says, it is not every melancholy or hypochondriacal distemper, that denominates a man *non compos*, for there are few who commit this offence, but are under such infirmities; but it must be such an alienation of mind, as renders a person to be a madman, or frantick, or destitute of the use of reason, which will denominate him *non compos*. 1 H. H. 412.

Forfeiture.

4. The offender herein doth incur a forfeiture of goods and chattels, but not of lands; for no man can forfeit his land, without an attainder by course of law. 3 Inst. 54.

Nor shall his goods be forfeited, until it be lawfully found by the oath of 12 men; and this belongs to the coroner to inquire of, upon view of the body. And if the body cannot be viewed, the justices in sessions may inquire thereof; for they have power by their commission to inquire of all felonies; and a presentment thereof found before them, intitles the king to the forfeiture. 3 Inst. 54, 55. Dalt. c. 144.

But

But nevertheless, the forfeiture shall relate to the time of the wound given, and not to the time of the death, or of the inquisition. 3 *Inst.* 55. *Dalt.* c. 144. 1 *Hale's Pl.* 29. 1 *Haw.* 68.

But lord *Hale*, in his history of the pleas of the crown, seemeth to doubt, whether it shall not relate to the time of the death only, and not to the time of the wound given.

1 *H. H.* 414.

5. Nor doth the offence work any corruption of blood, or loss of dower. 1 *Haw.* 68. Corruption of blood.

6. By the rubrick in the book of common prayer, before the burial office (confirmed by act of parliament, 13 & 14 C. 2. c. 4.) persons who have laid violent hands upon themselves, shall not have that office used at their interment.

Hops. See Exercise.

Horses.

I. Stealing of horses.

II. Buying of stolen horses.

III. Killing or maiming horses in the night.

IV. Putting stoned horses on commons.

V. Putting scabbed horses on commons.

I. Stealing of horses.

BY the 1 *Ed.* 6. c. 12. s. 10. No person or persons convicted for feloniously stealing of horses, geldings, or mares, shall be admitted to enjoy the privilege of clergy.

And by the 2 & 3 *Ed.* 6. c. 33. Whereas there hath been some doubt upon the foregoing clause, whether a person convicted for feloniously stealing of one horse, gelding, or mare, ought to be admitted to enjoy the privilege of clergy, it is declared and enacted, that all and singular person and persons feloniously taking or stealing any horse, gelding, or mare, shall not be admitted to enjoy the privilege of clergy, but shall be put from the same.

The reason of which doubt is obvious; because a penal statute (and especially where life is concerned) ought not to be extended beyond the express words thereof, but to be taken strictly in favour of the subject.

If they be stolen out of the stable or other curtilage of the dwelling house, in the night time, it falls under the denomination of *Burglary*; if in the day time, it falls under the denomination of *Larceny from the house*: And in either case, there is a reward of 40*l* for convicting an offender, and an exemption from offices; as is set forth at large under the respective titles of *Burglary* and *Larceny*.

II. Buying of stolen horses.

By the 2 & 3. P. & M. c. 7. and 31 El. c. 12. it is enacted as follows:

Horse fair.

1. The keeper of every fair and market shall yearly appoint a certain special and open place, where horses shall be sold in any fair or market overt.

Toll taker.

2. And shall appoint one or more persons to take toll there, and to keep the same place from ten in the forenoon till sun-set.

Horse to be shewed one hour.

3. And the sale or exchange in any fair or market overt, of any stolen horse, shall not alter the property, unless the same shall be; in the time of the said fair or market, openly ridden, led, walked, driven, or kept standing, for one hour together at least, between ten of the clock and sun-set, in the open place of the fair or market, wherein horses are commonly used to be sold, and not within any house, yard, backside, or other privy or secret place.

Seller and buyer to go to the toll taker.

4. Nor unless all the parties to the bargain shall come together, and bring the horse to the open place appointed for the toll taker, or for the book keeper where no toll is due.

Sale to be entered.

5. Nor unless such toll taker there, or (where no toll is paid) the book keeper or chief officer of the fair or market, shall take upon him perfect knowledge of the seller, and of his true christian name and surname and place of abode, and shall enter all the same his knowledge in a book to be kept for that purpose, or else that the seller shall bring to the toll taker, or other officer aforesaid, one credible person, that shall testify that he knoweth the seller, and his true name, surname, mystery, and dwelling place, and there enter the same, and also the

the name, surname, mystery, and dwelling place of him that so avoucheth his knowledge.

6. Nor unless he also cause to be entered, the very true And the price, price.

7. And also the colour, and one special mark at least. And marks.

8. And also the buyer to pay the toll, if any is due; if Toll to be paid, not, then to give 1 d for the entry.

9. Which done, the person entring the same shall give Certificate of entry. to the buyer requiring and paying 2 d for the same, a note in writing of all the contents of such entry subscribed with his hand.

10. Every person offending in any of the premises shall Penalties. forfeit 5 l, half to the king, and half to him that shall sue before the justices in sessions, or in any ordinary court of record; and the sale shall be void: and the owner may seize and take his horse again, or have an action of detinue or replevin for the same.

11. And if any horse shall be stolen, and after shall be sold in open fair or market, and the sale shall be used in all points as aforesaid, yet nevertheless such sale in six months after the felony done, shall not take away the owner's property, so as claim be made in six months, where the horse shall be found, before the mayor, if in a town corporate, or else before a justice near the place where found, and so as proof be made before such magistrate in 45 days next ensuing by two witnesses, that the property of such horse was in the party claiming, and was stolen from him within six months next before such claim; but the party from whom the same was stolen, may at all times after, notwithstanding such sale, take again the said horse, on payment, or readiness to offer to the party who hath possession, so much as he shall swear before such magistrate, that he paid for the same. Case where the horse shall have been duly entred.

III. Killing or maiming horses in the night.

1. By the 22 & 23 C. 2. c. 7. Where any person shall Killing. in the night time maliciously kill or destroy any horses; he shall be guilty of felony, and may be transported, by three justices in sessions, for seven years.

2. And if any person shall in the night time maliciously Maiming. wound or hurt any horses; he shall forfeit to the party grieved treble damages, to be recovered by action at law, or before three justices.

IV. Putting stoned horses on commons.

Sizc.

1. No person shall put in any forest, chase, moor, heath, common, or waste (where mares or fillies are used to be kept) any stoned horse above the age of two years, not being 15 hands high, within the shires and territories of *Norfolk, Suffolk, Cambridge, Buckingham, Huntingdon, Essex, Kent, South-Hampshire, North-Wiltshire, Oxford, Berkshire, Worcester, Gloucester, Somerset, North-Wales, South-Wales, Bedford, Warwick, Northampton, Yorkshire, Cheshire, Staffordshire, Lancashire, Salop, Leicester, Hereford, and Lincoln*; nor under 14 hands in any other county (except *Cornwall*, 21 *J. c. 28. f. 12*), on pain of forfeiting the same. 32 *H. 8. c. 13. f. 2, 10.*

But this shall not extend to the *marshes* in the counties of *Cambridge, Huntingdon, Suffolk, Northampton, Lincoln, and Norfolk*; provided that the horses be of 13 hands. 8 *El. c. 8. f. 3.*

Also nothing herein shall extend to any stoned horse, that shall happen once in a year to break out of any pasture into such common, so that he do not stay there above four days after notice given at the dwelling house of the owner, or after publication thereof on a *sunday* or other festival, in the parish church where the owner or possessor of such horse dwelleth. 32 *H. 8. c. 13. f. 5.*

Seising the same.

2. And any person may seize any such horse so being under size, in manner following: He shall go to the keeper of such forest, or (out of such forest) to the constable of the next town; and require him to go with him, to bring such horse to the next pound; and there to be measured by such officer, in the presence of three other honest men to be appointed by the officer; and if he shall be found contrary to what is above expressed, such person may take him for his own use. 32 *H. 8. c. 13. f. 3.*

And if such keeper, or constable, or other of the three persons shall refuse to do as is aforesaid; he shall forfeit 40s. *f. 4.*

Driving the common.

3. And all such commons and other places shall, within 15 days after *Michaelmas* yearly, be driven by the owners and keepers, or constables, respectively, on pain of 40s; and they may also drive the same at any other time when they shall think meet. 32 *H. 8. c. 13. f. 6.*

And if in any of the said drifts, there shall be found any mare, filly, foal, or gelding, that shall then be thought not able, nor like to grow to be able to bear foals of reasonable stature, or to do profitable labours, by the discretion of the drivers, or of the more number of them; they may kill and bury them. *f. 7.*

4. All which said forfeitures shall be half to the king, *Penalties,* and half to him that shall sue: and the justices in sessions, and stewards of leets, may inquire thereof; and the steward shall certify his presentments to the next sessions. *32 H. 8. c. 13. f. 8.*

V. Putting scabbed horses on commons.

No person shall have, or put to pasture, any horse, *Scabbed,* gelding, or mare, infected with scab or mange, in any common, or common fields; on pain of 10s; which offence shall be inquirable in the leet, as other common-annoyances be, and the forfeitures shall be to the lord of the leet. *32 H. 8. c. 13. f. 9.*

Horse Races.

1. **BY** the 13 G. 2. c. 19. Whereas the great number of horse races for small plates or prizes have contributed very much to the encouragement of idleness, and impoverishment of many of the meaner sort of people, and the breed of strong and useful horses hath been much prejudiced thereby; it is enacted, that no person shall enter, start, or run any horse (mare or gelding) for any prize, unless the same shall be *bona fide* his own property: on pain of forfeiting the same, or the value thereof. *f. 1.*

2. Nor shall any one person enter and start more than one horse for one and the same prize; on pain that every such horse (other than that which was first entered) shall be forfeited, or the value thereof. *Id.*

3. And no plate, prize, sum of money, or other thing, shall be run for, or advertised or proclaimed to be run for, unless such plate, prize, or sum of money, be of the value of 50 l or upwards: And if any person shall enter, start, or run, any horse for any such plate, prize, or sum of money, under the value of 50 l; or shall make, print,

Horse Races.

advertise, or publish any advertisement of any such prize under the value of 50 l; every such person so entering, starting, or running such horse, shall forfeit 200 l, and every maker, printer, or publisher of such advertisement, shall forfeit 100 l. *f. 2.*

4. The said penalties to be recovered in the courts at Westminster or at the assizes, and be disposed of, half to him that shall sue, and half to the poor of the parish where the offence shall be committed. *f. 6.*

5. And all sums of money paid for entrance shall go to the second best horse. *f. 7.*

6. And betting, losing, winning, cheating, and the like, at horse races, are within the statutes of Gaming; for which see the Title Gaming.

Houses (duty on). See **Windows**.

Housebreaking. See **Burglary and Larceny**.

House of correction.

Building or repairing houses of correction.

1. **BY** the 7 *J. c. 4.* It was enacted, that before Michaelmas 1611, there should be built or provided within every county, one or more fit and convenient houses of correction, with convenient backside thereunto adjoining, together with mills, turns, cards, and such like necessary implements, to set rogues, vagabonds, or other idle, vagrant, and disorderly persons on work; which houses were to be purchased, conveyed, or assured unto such persons, as by the justices in sessions should be directed, upon trust that the same should be employed for the keeping, correcting, and setting to work the said rogues, vagabonds, or sturdy beggars, and other idle and disorderly persons. *f. 2.*

And by the 17 *G. 2. c. 5.* On presentment of the grand jury, at the assizes, great sessions, or general gaol delivery, held for any county or liberty (or at the general sessions, or general quarter sessions of the peace, where there shall be no assizes, great sessions, or general gaol delivery held, 14 *G. 2. c. 33. f. 2.*) that there is no house of correction, and that it will be necessary to provide one or more; or that the houses of correction already provided are not sufficient or convenient, or want to be enlarged;

enlarged; the justices in sessions shall have power to build or enlarge one or more fit houses of correction, or to buy or hire houses for that purpose, with convenient back-sides or outlets thereto adjoining, or to purchase land, and to erect such house or houses upon part thereof, and to lay out the rest of such lands for such back-sides or outlets: and to conclude and agree upon raising such sums of money, as on examination of able and sufficient workmen, or others, shall appear to be necessary for that purpose: And if houses or lands are to be purchased, they shall be conveyed to such persons as the said justices in sessions shall direct, in trust and for the uses and purposes aforesaid. *f. 30.*

2. And the justices in sessions shall appoint at their will and pleasure fit persons to be governors or masters of such houses so to be provided. *7 f. c. 4. f. 4. 17 G. 2. c. 5.* Appointing the master.

3. And for the said master or governor's travel and care to be had in the said service, and for the relieving of such as shall be weak and sick in his custody, the justices in sessions shall appoint such sums yearly as they shall think meet, to be paid quarterly beforehand by the treasurer (the said master or governor giving sufficient security for the continuance and performance of the said service.) *7 f. c. 4. f. 6. 17 G. 2. c. 5. f. 33.* His salary.

Which sums shall be paid out of the general county rate, by the *12 G. 2. c. 29.*

4. And the justices in sessions shall take care, that the houses of correction (except those erected or maintained by particular founders) shall be duly fitted up and supplied with implements, materials, and furniture, for keeping, relieving, employing, and correcting all idle and disorderly persons, rogues, vagabonds, incorrigible rogues, and others, who shall be sent to, confined or continued in the same; and shall make such orders and regulations as they shall think fit, for the better governing and regulating the said houses, and for employing, relieving, and punishing the persons therein, or for sending them to or from thence; which orders shall not be removed by any certiorari. *17 G. 2. c. 5. f. 31.* Fitting up the house.

5. And whereas doubts may arise, where authority is given to any justice or justices, to commit offenders to the house of correction, for offences cognizable before them out of sessions, how long offenders may be there detained, and in what manner treated, where the time and manner of their punishment is not by law expressly limited; Commitment thither.

House of correction.

it is enacted, that where any offenders shall be committed as aforesaid, by virtue of any law in being or to be made, and the time and manner of their punishment is not expressly limited, the said justice or justices shall commit such offenders to the house of correction, there to be kept to hard labour until the next general or quarter sessions, or until discharged by due course of law: And two justices (of which the justice who committed him to be one) may discharge the said offender before the sessions, if they see cause; and if he shall not be so discharged, the said sessions may either, discharge him, or continue him further not exceeding three months. 17 G. 2. c. 5. §. 32.

And where any person liable by law to be committed to the house of correction, shall be apprehended within any liberty, city, or town corporate, whose inhabitants are contributory to the house of correction of the county, the justices of such liberty may commit such person to the house of correction of the county. 15 G. 2. c. 24.

The master's
duty.

6. The said master or governor shall have power to set such rogues, vagabonds, idle and disorderly persons, as shall be brought or sent to the said house, to work and labour (being able), for such time as they shall continue therein, and to punish them by putting fetters or gives upon them, and by moderate whipping: And the said rogues, vagabonds, and idle persons, during such time as they shall continue in the said house of correction, shall in no sort be chargeable to the country for any allowance, either at their bringing in, or going forth, or during their abode there, but shall have such and so much allowance as they shall deserve by their own labour and work. 7 J. c. 4. §. 4.

And if the master shall not, at every quarter sessions, yield a true account of all such persons as have been committed to his custody; or if any person committed to his custody, shall be troublesome to the country, by going abroad; or otherwise shall escape away from the house of correction, before he shall be from thence lawfully delivered; then the said justices shall set down such fines and penalties upon the said master or governor, as they shall think fit; and all fines and penalties shall be paid to the treasurer, and accounted for by him. 7 J. c. 4. §. 9.

And two justices within the respective hundreds, divisions, or jurisdictions, where there shall be any house of correction, or any two justices appointed by the sessions, shall

shall visit the same twice a year, or oftener if need be, and report the state thereof to the next sessions. And if the governors thereof shall not set or keep the said idle and disorderly persons, rogues, vagabonds, and incorrigible rogues, to hard labour, and punish and correct them according to the directions of their warrants of commitment, or shall otherwise misbehave themselves, the said justices in sessions shall fine them, as by the 7 *J. c. 4.* the fines to be paid to the treasurer, and accounted for by him as part of the county stock. 17 *G. 2. c. 9. f. 31.*

7. The justices in sessions may remove the said governor or master; and if any person removed by order of sessions, shall refuse or neglect to quit possession, for ten days after notice given him in writing by the clerk of the peace, any two justices (on producing to them such order of sessions, or an attested copy thereof, and on oath of one witness of such notice having been given, and of his having refused or neglected to quit possession) may by their warrant direct the sheriff to remove him, who shall thereupon clear the possession as in case of a writ of *habere facias possessionem.* 17 *G. 2. c. 5. f. 31.*

8. By the 24 *G. 2. c. 40.* No spirituous liquors shall be sold or used in any house of correction; as may be seen more at large, under the article relating to spirituous liquors, in the title *Crisis.*

9. And to defray the expences of erecting, purchasing, hiring, enlarging, altering, and repairing houses of correction, and of purchasing land to erect them upon, and for backslides and outlets, and of fitting up and furnishing such houses, and of sending persons to and from the same, and employing them there, the justices in sessions may cause such sums as shall be necessary, to be raised in the same manner as rates are to be raised by the 12 *G. 2. c. 29.*

17 *G. 2. c. 5. f. 33.*

General

General form of a commitment to the house of correction.

Westmorland. { *J. P.* esquire, one of the justices of our lord the king assigned to keep the peace within the said county, to the constable of ——— in the said county, and to the keeper of the house of correction at ——— in the said county.

THESE are to command you the said constable in his said majesty's name forthwith to convey and deliver into the custody of the said keeper of the said house of correction the body of A. O. being charged before me [or, convicted before me, or otherwise as the case shall be : And here set forth the offence.] And you the said keeper are hereby required to receive the said A. O. into your custody in the said house of correction, and him there safely to keep, until ----- [or, for the space of ----- And here set forth the time, and the manner of punishment.] Herein fail you not. Given under my hand and seal the — day of — in the — year of —.

Hue and cry.

Meaning of the words.

I. **L**ORD Coke saith, that hue and cry (called in ancient records *hutesum* & *clamor*) do mean the same thing ; for that *huer* in French is to hoot or shout, in English to cry. 2 *Inst.* 173. 3 *Inst.* 116.

But since it appeareth by the old books (of which also lord Coke maketh observation, 2 *Inst.* 173.) that hue and cry was anciently both by horn and by voice, it may seem that these two words are not synonymous, but that this *hutesum* or *hooting* is by the horn, and *crying* by the voice ; with which also accordeth the French word *huchet*, which signifieth a huntsman's horn : So that hue and cry in this sense will properly signify a pursuit by horn and by voice. Which kind of pursuit of robbers by blowing a horn, and by making an outcry, is said to be practised also in Scotland.

And

And this blowing of a horn, by way of notice or intelligence, in other cases as well as in the pursuit of felons, seemeth to have been in use of very ancient time: for amongst the laws of *Witred* king of *Kent*, in the year 696, this is one; that "if a stranger go out of the road, and neither shout nor blow a horn, he shall be taken for a thief."

2. Hue and cry is the old common law process after felons, and such as have dangerously wounded any person: And this hath received great countenance and authority by several acts of parliament. 2 *H. H.* 98. Hue and cry, what.

3. To prevent felonies; In walled towns the gates shall be shut from sun setting to sun rising: and none shall lodge without the town, from nine of the clock till day, unless his host will answer for him. In other towns, watches shall be kept: and if a watchman arrest a night-walker, and he disobey and fly, the watchman may make hue and cry. 13 *Ed.* 1. *ff.* 2. c. 4. Watches to be kept.

4. When any felony is committed, or any person is grievously and dangerously wounded, or any person assaulted and offered to be robbed, either in the day or night; the party grieved, or any other, may resort to the constable of the vill; and, 1. Give him such reasonable assurance thereof, as the nature of the case will bear. 2. If he knows the name of him that did it, he must tell the constable the same. 3. If he knows it not, but can describe him, he must describe his person, or his habit, or his horse, or such circumstances as he knows, which may conduce to his discovery. 4. If the thing be done in the night, so that he knows none of these circumstances, he must mention the number of the persons, or the way they took. 5. If none of all these can be discovered, as where a robbery, or burglary, or felony is committed in the night, yet they are to acquaint the constable with the fact, and desire him to search in his town for suspected persons, and to make hue and cry after such as may be probably suspected, as being persons vagrant in the same night; for many circumstances may *ex post facto* be useful for discovering a malefactor, which cannot be at first found. 2 *H. H.* 100, 101. 3 *Inst.* 116. Application to the constable.

5. For levying hue and cry, altho' it is a good course to have the warrant (A) of a justice of the peace, when time will permit, in order to prevent causeless hue and cry; yet by the frame of the statutes, it is by no means necessary, nor is it always convenient; for the felon may escape before the warrant be obtained, and hue and cry was. Justice's warrant.

was part of the law, before justices of the peace were first instituted. 2 *H. H.* 99.

Constable to
raise the town.

6. And the duty of the constable is, to raise the power of the town, as well in the night as in the day, for the prosecution of the offender. 3 *Inst.* 116.

And to search.

7. And upon hue and cry levied against any person, or where any hue and cry comes to a constable, whether the person be certain or uncertain, the constable may search suspected places within his vill, for the apprehending of the felons. 2 *H. H.* 103.

Breaking doors
to search.

8. But tho' he may search suspected places or houses, yet his entry must be by the doors being open; for he cannot break open doors barely to search, unless the person against whom the hue and cry is levied be there, and then it is true he may; therefore in case of such a search, the breaking open the door is at his peril, namely, justifiable, if he be there; not justifiable, if he be not there: But it must be always remembered, that in case of breaking open a door, there must be first a notice given to them within of his business, and a demand of entrance, and a refusal, before the doors can be broken. 2 *H. H.* 103. 2 *Haw.* 86.

Notice to the
next constable.

9. If the person, against whom the hue and cry is raised, be not found in the constablewick, then the constable shall give notice to the next constable, and he to the next, until the offender be found, or till they come to the sea-side. And this was the law before the conquest. 3 *Inst.* 116.

And to the next.

10. And the officer of the town where the felony was done, as also every officer to whom the hue and cry shall afterwards come, ought to send to every other town round about him, and not to one next town only. And in such cases it is needful to give notice in writing (to the pursuers) of the things stolen, and of the colour and marks thereof, as also to describe the person of the felon, his apparel, horse, and the like, and which way he is gone, if it may be. *Dalt. c.* 54.

What shall be
done where the
person cannot be
described.

11. But if the hue and cry be upon a robbery, burglary, manslaughter, or other felony committed, but the person that did the fact is neither known nor describable by person, clothes, or the like, yet such a hue and cry is good, as hath been said, and must be pursued, tho' no person certain be named or described. 2 *H. H.* 103.

And therefore in this case, all that can be done is, for those that pursue the hue and cry, to take such persons as they have probable cause to suspect; as for instance, such persons

persons as are vagrants, or such suspicious persons as come late into their inn or lodgings, and give no reasonable account where they had been, and the like. *id.*

12. By the statute of the 3 *Ed. 1. c. 9.* All shall be ready, and apparelled, at the commandment and summons of sheriffs (or constables, 2 *Inst. 171.*) and at the cry of the country, to sue and arrest felons; on pain of a grievous fine. And if default be found in the lord of the franchise, the king shall take the franchise to himself; and if in the sheriff or other officer, they shall have one year's imprisonment, and shall make a grievous fine.

All persons shall follow the hue and cry.

And by the statute of the 13 *Ed. 1. st. 2. c. 1.* it is likewise enacted, that immediately upon robberies and felonies committed, fresh suit shall be made, from town to town, and from county to county.

And no hue and cry shall be lawful, except it be by horsemen and footmen. 27 *El. c. 13. s. 10.*

And the life of hue and cry is fresh suit. 3 *Inst. 117.*

13. If the person pursued by hue and cry be in a house, and the doors are shut, and refused to be opened on demand of the constable, and notification of his business, he may break open the doors; and this he may do in any case where he may arrest, though it be only a suspicion of felony; for it is for the king and commonwealth, and therefore a virtual *non omittas* is in the case: And the same law is, upon a dangerous wound given, and a hue and cry levied upon the offender. 2 *H. H. 102.*

Breaking doors to arrest upon pursuit.

14. And it seems in this case, that if he cannot be otherwise taken, he may be killed; and the necessity excuseth the constable. 2 *H. H. 102.*

Killing in the pursuit.

15. If hue and cry be raised against a person certain for felony, though possibly he is innocent; yet the constables, and those that follow the hue and cry, may arrest and imprison him in the common gaol, or carry him to a justice of the peace, to be examined where he was at the time of the felony committed, and the like. 2 *H. H. 102.*

Arresting an innocent person.

16. If the hue and cry be not against a person certain, but by description of his stature, person, clothes, horse, and the like; yet the hue and cry doth justify the constable or other person following it, in apprehending the person so described, whether innocent or guilty: For that is his warrant; it is a kind of process that the law allows of, not usual in other cases, namely, to arrest a person by description. 2 *H. H. 103.*

Arresting a person by description.

17. In

Case of arresting
upon hue and cry
levied without
cause.

17. In case of hue and cry once raised and levied, on supposal of a felony committed, though in truth there was no felony committed, yet those that pursue hue and cry, may arrest and proceed, as if so be a felony had been really committed.

And therefore the justification of an imprisonment by a person upon suspicion, and by a person (especially a constable) upon hue and cry levied, do extremely differ; for in the former case, there must be a felony averred to be done, and it is issuable; but in the latter, to wit, upon hue and cry it need not be averred; but the hue and cry levied upon information of a felony is sufficient, though perchance the information were false.

And the reasons hereof are these; 1. Because the constable cannot examine the truth or falsehood of the suggestion of him that first levied it, for he cannot administer to him an oath; and if he should forbear his pursuit of the hue and cry till it be examined by a justice of the peace, the felon might escape; and the pursuit would be lost and fruitless. 2. Because the constable is by the several acts of parliament compellable to pursue hue and cry; and he is punishable, and so are those of the vill, if they do it not. 3. Because he that first raiseth a hue and cry, where no felony is committed, that is, he who giveth the false information, is severely punishable by fine and imprisonment, if the information be false.

And therefore if he raise hue and cry upon a person that is innocent, yet they that pursue the hue and cry may justify the imprisonment of that innocent person; and the raiser is punishable: And by the same reason, if he give notice of a felony committed, where there was in truth none.

And here the justification of the imprisonment is mixed, partly upon the hue and cry, and partly upon their own suspicion; and therefore, 1. In respect that it is upon hue and cry there needs no averment, that the felony was done, if the arrest be by that constable that first received the information, and so raised the hue and cry; or if the arrest were made by that constable, or those vills to whom the hue and cry came at the second hand, it must be averred; that such a hue and cry came to them, purporting such a felony to be done. 2. But also inasmuch as the hue and cry neither names nor describes the person of the felon, but only the felony committed, and therefore the arrest of this or that particular person is left to the suspicion and discretion of the constable, or of the people of
the

the second or third vill, he that arrests any person upon such general hue and cry, must aver that he suspected, and shew a reasonable cause of suspicion.

But now by the statute of 7 J. c. 5. the constable, or any that come to his assistance, even in this case of hue and cry, may plead the general issue, and give the whole matter of the justification in evidence; for the pursuit of hue and cry, though performed by others as well as the constable, is principally the act of the constable of the vill, and the others are but as his deputies or assistants, within the precincts of their constablewick. 2 H. H. 101, 2.

3. 4.

18. It seems that they who are taken upon fresh hue and cry, are not bailable, as being to be accounted amongst those persons, who are under a violent presumption of guilt. 2 Haw. 98.

Persons taken on hue and cry, how far bailable.

19. By the 13 Ed. 1. st. 2. c. 6. Constables of hundreds shall be chosen, who shall present before justices assigned; defaults of the suits of towns, and all such as lodge strangers in uplandish towns, for whom they will not answer.

High constables to present those who pursue not hue and cry.

20. And they which levy not hue and cry, or pursue not upon hue and cry, may be indicted, fined, and imprisoned. 3 Inst. 117.

Punishment of those who follow not hue and cry.

21. And it is an article of the lect, to inquire of hues and cries levied and not pursued. 18 Ed. 2.

Power of the lect to inquire thereof.

A. Warrant to levy hue and cry on a robbery having been committed.

Westmorland. { To all constables and other officers, as well in the said county of Westmorland, as elsewhere, to whom the execution hereof doth or shall belong.

WHEREAS A. I. of — in the county of — yeoman, hath this day made information upon oath, before me J. P. esquire, one of his majesty's justices of the peace in and for the said county of W. that on this present — day of — in the — year of the reign of — betwixt the hours of three and four in the afternoon of the same day, at a place called — in the said county of W. in the king's highway there, two malefactors and felons, to him the said A. I. unknown, in and upon him the said A. I. then and there being in the peace of God and of our lord the king, feloniously did make an assault, and him

him the said A. I. then and there feloniously did put in great fear and danger of his life, and the sum of ——— of lawful money of Great Britain, of the goods and chattels of him the said A. I. from the person, and against the will of him the said A. I. then and there violently and feloniously did steal, take and carry away; and that one of the said malefactors and felons, to him the said A. I. unknown, is a tall, strong man, and seemeth to be about the age of ——— years, is pitted in the face with the small pox, and hath the scar of a wound under his left eye, and had then on a dark brown riding coat, &c. and did ride upon a bay gelding with a star on his forehead; and the other, &c. And that after the said felony and robbery committed, they the said malefactors and felons, to him the said A. I. unknown, did fly, and withdraw themselves to places unknown, and are not yet apprehended: These are therefore to command you forthwith to raise the power of the towns within your several precincts, and to make diligent search therein, for the persons above described, and to make fresh pursuit and hue and cry after them from town to town, and from county to county, as well by horsemen as by footmen; and to give due notice hereof in writing, describing in such notice the persons and the offence aforesaid, unto every next constable on every side, until they shall come to the sea shore, or until the said malefactors and felons shall be apprehended; and all persons whom you or any of you shall, as well upon such search and pursuit, as otherwise, apprehend or cause to be apprehended, as justly suspected for having committed the said robbery and felony, that you do carry forthwith before some one of his said majesty's justices of the peace in and for the county where he or they shall be so apprehended, to be by such justice examined, and dealt withal according to law. And hereof fail you not respectively, upon the peril that shall ensue thereon. Given under my hand and seal, at ——— in the said county of W. the ——— day of ——— aforesaid, in the year aforesaid.

[Supplementary to this ancient establishment, may be considered Sir John Fielding's excellent plan for the discovery of offenders, after they have escaped the fresh pursuit upon hue and cry, by sending immediate notice to a certain known office in London, from whence are issued weekly accounts to every part of the kingdom, describing the offence and the offenders, with as much minuteness as the case will admit of: Whereby many notorious offenders have been apprehended, and much stolen property

hath

hath been recovered. The reason why nothing of this kind was attempted in ancient times is very evident. Before the invention of printing, it was impossible to transmit so many notices as are requisite for the completion of this comprehensive scheme; and in those ages, when commerce was little known, the conveyance by the post was tedious, dilatory, and uncertain. It might be wished, that the legislature would in some sort think this institution an object of their attention, in order to give it a degree of permanency, in proportion as it hath been found beneficial.]

hundred.

IN ancient times, before the conquest, it was ordained for the more sure keeping of the peace, that all free born men should cast themselves into several companies, by ten in each company; and that every of those ten men should be surety and pledge for the forthcoming of his fellows. For which cause, these companies in some places were called tythings, as containing the number of ten men with their families. And even as ten times ten do make an hundred, so because it was then also appointed, that ten of these companies should at certain times meet together for their matters of greater weight, therefore that general assembly was, and yet is called an hundred. *Lamb. Const.*

Hundred whence so called.

2. If any homicide be committed, or dangerous wound given, in the day time, and the offender escape, the town shall be amerced; and if out of a town, the hundred shall be amerced. 2 *Haw.* 74.

Hundred to be amerced for an escape.

3. The hundred shall make good the damages, in cases of robbery; cutting banks; cutting hop-binds; burning houses, barns, outhouses, hovels, cocks, mows, or stacks of corn, straw, hay, or wood; mines or pits of coal; destroying granaries, or corn intended for exportation; destroying turnpikes; or works of navigable rivers; and the like: As may be seen under their proper titles.

Hundred answerable in divers other cases.

4. Writs of execution which shall be sued out against the inhabitants of any hundred, on any judgment ob-

Damages how to be levied.

tained by virtue of any act of parliament, shall by the sheriff on receipt thereof be produced to two justices, (1 Q.) in or near the hundred; who shall cause a taxation to be made and levied by the constables in 30 days, for paying the plaintiff's costs and damages, and also all such necessary expences, as any inhabitants shall have been at in defending such action; the same being first proved on oath before the said justices; and the attorney's bill taxed. And the said sums shall be paid to the sheriff by the constables in ten days after the time is expired for collecting; and by the sheriff, to the persons intitled to receive the same, without any deduction or fee; all in the same manner, as is directed by the statute of the 8 G. 2. c. 16. in cases of robbery. 22 G. 2. c. 46. f. 34.

Hunting. See Game.

Husband. See Wife.

Idcots. See Lunaticks.

Imprisonment. See Arrest, Commitment.

Incest. See Lewdness.

Inclosures, pulling down.

By the 13 Ed. 1. §. 1. c. 46. Where sometimes it chanceth, that one having a right to approve, doth then levy a dyke or an hedge, and some by night, or at another season, when they suppose not to be espied, do overthrow the hedge or dyke, and it cannot be known by verdict of the assize or jury, who did overthrow the hedge or dyke, and men of the towns near will not indict such as be guilty of the fact; the towns near adjoining shall be distrained to levy the hedge or dyke at their own cost, and to yield damages.

And

Inclosures, pulling down.

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And such person as shall bring an affize thereupon, and have judgment to recover, shall have his damages trebled by the judgment of the court. 3 & 4 Ed. 6. c. 6.

And by the 9 G. 3. c. 29. If any person shall wilfully or maliciously demolish, pull down, or otherwise destroy or damage, any fence made for dividing or inclosing any common, waste, or other lands or grounds in pursuance of any act of parliament, or shall cause or procure the same to be done; he shall be guilty of felony, and transported for 7 years. Prosecution to be commenced in 18 months after the offence committed.

Indictment.

I. Indictment, what.

II. What offences are indictable.

III. Within what time an indictment shall be brought.

IV. How far several offenders or several offences may be joined in one indictment.

V. Whether the grand jury may examine witnesses against the king.

VI. How many witnesses are requisite to an indictment.

VII. Whether a grand jury may find an indictment specially.

VIII. Indictment to be in English.

IX. Form of an indictment.

X. Charges of an indictment.

I. Indictment, what.

INDICTMENT cometh of the French word *enditer*, and signifieth in law, an accusation found by an inquest of twelve or more upon their oath. And as the appeal is ever the suit of the party, so the indictment is always the suit of the king, and as it were his declaration;

Indictment.

tion; and the party who prosecutes it, is a good witness to prove it. And when such accusation is found by a grand jury, without any bill brought before them, and afterwards reduced to a formed indictment, it is called a *presentment*; and when it is found by jurors returned to inquire of that particular offence only which is indicted, it is properly called an *inquisition*. 1 Inst. 126. 2 Haw. 209.

II. What offences are indictable.

There can be no doubt, but that all capital crimes whatsoever, and also all kinds of inferior crimes of a publick nature, as misprisions, contempts, disturbances of the peace, oppressions, and all other misdemeanors whatsoever of a publick evil example against the common law, may be indicted: but no injuries of a private nature, unless they some way concern the king. 2 Haw. 210.

Also it seems to be a good general ground, that wherever a statute prohibits a matter of publick grievance to the liberties and security of a subject; or commands a matter of publick convenience, as the repairing of the common streets of a town; an offender against such statute is punishable, not only at the suit of the party grieved, but also by way of indictment for his contempt of the statute, unless such method of proceeding do manifestly appear to be excluded by it. Yet if the party offending hath been fined to the king, in the action brought by the party (as it is said that he may in every action for doing a thing prohibited by statute); it seems questionable, whether he may afterwards be indicted, because that would make him liable to a second fine for the same offence. 2 Haw. 210.

But if a statute extend only to *private* persons, or if it extend to all persons in general, but chiefly concern disputes of a private nature, as those relating to distresses made by lords on their tenants, it is said that offences against such statute will hardly bear an indictment. 2 Haw. 211.

Also where a statute makes a new offence, and appoints a particular method of proceeding, without mentioning an indictment, it seemeth to be settled at this day, that it will not maintain an indictment. 2 Haw. 211. Str. 679.

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But lord Hale distinguishes upon this, and says, that if a statute prohibit any act to be done, and by a substantive clause gives a recovery by action of debt, bill, plaint, or information, but mentions not an indictment; the party may be indicted upon the *prohibitory clause*, and thereupon fined, but not to recover the penalty; but then it seems the fine ought not to exceed the penalty: but if the act be not prohibitory, but only that if any person shall do such a thing, he shall forfeit so much, to be recovered by action of debt, bill, plaint, or information; then he cannot be indicted for it, but the proceeding must be by action, bill, plaint, or information. 2 H. H. 171.

Also, where a statute adds a further penalty, to an offence prohibited by the common law; there can be no doubt, but that the offender may be still indicted, if the prosecutor thinks fit, at the common law. And if the indictment for such offence conclude *against the form of the statute*, and cannot be made good as an indictment upon the statute, it seems to be now settled, that it may be maintained as an indictment at common law. 2 How. 211.

A fact amounting to a felony, is not indictable as a trespass. L. Raym. 712.

III. Within what time an indictment shall be brought.

By the 31 El. c. 5. All indictments upon any statute penal, whereby the forfeiture is limited to the king, shall be sued within two years after the offence committed: if the forfeiture is limited to the king and prosecutor, the suit shall be in one year; and in default thereof, the same shall be sued for the king, within two years after that year ended. But where a statute limits a shorter time, the suit shall be brought within such time limited.

But for indictments of felonies and other misdemeanors where there is no forfeiture to the king, or to the king and prosecutor, no time is limited by any statute; but the several acts of general pardon have the effect of a like limitation. The last act of which kind was that of the 20 G. 2. c. 52. for certain offences committed before June 15, 1747.

IV. How far several offenders or several offences may be joined in one indictment.

1. If there be *one offender*, and *several offences* committed by him, as burglary and larceny, they may be contained in one indictment. 2 *H. H.* 173.

But in the case of *K. and Clendon, T. 4 G. 2.* There was an indictment setting forth, that the defendant made an assault upon *Sarah Beatniff* and *Elizabeth Cooper*, and did them beat, wound, and evil intreat. After verdict for the king, it was moved in arrest of judgment, that these were distinct offences, and required different and distinct judgments, and might require different and distinct fines, and therefore could not be joined in one and the same indictment, but there ought to have been a several indictment for each; and of that opinion was the court, and the judgment was arrested. *Strange* 870. *L. Raym.* 1572. But in the case of the *King* against *Benfield* and *Saunders, E. 33 G. 2.* the court held this case of *Clendon* not to be law; and said, cannot the king call a man to account for a breach of the peace, because he broke two heads instead of one? It is a prosecution in the king's name, for the offence charged; and not in the nature of an action, where each person injured is to recover separate damages. *Burr. Mansf.* 984.

2. If there be *several offenders* that commit the same offence, though in law they are several offences in relation to the several offenders, yet they may be joined in one indictment; as if several commit a robbery, or burglary, or murder. 2 *H. H.* 173.

So in the aforesaid case of *K. v. Benfield and Saunders*, which was for the defendants singing a libellous song against *John* and *Jane Cooke*, the court held, that this being a joint act, done by both, (for they had both joined in the act of singing the libellous matter), therefore they might well be joined in one and the same indictment. *Burr. Mansf.* 385.

3. And so it is, though the offences are of *several degrees*, but dependent one upon another, as the principal in the first degree, and the principal in the second degree, to wit, present, aiding and abetting the principal, and accessory before or after. 2 *H. H.* 173.

4. Also several persons may be indicted in the same indictment for *several offences of the same nature*, as for keeping

ing disorderly houses; but the indictment ought to set forth that they severally did so. 2 H. H. 173.

And this is only to be understood, where the offences may be joint, as in extortion, maintenance, receiving stolen goods, and the like; and not where the offence is a separate act in each, as in the case of *K. against Philips* and others, *M. 5 G. 2.* Six were indicted in one indictment for perjury, and four of them pleading, were convicted. It was moved in arrest of judgment, that the crime of perjury is in its nature several, and two cannot be indicted together. And by the court, There may be great inconveniences if this is allowed; one may be desirous to have a certiorari, and the other not; the jury on the trial of all, may apply evidence to all, that is but evidence against one: And they cited a case, *T. 6 An. 2.* against *Hodgson* and others, where two were indicted for being scolds, and compared to barratry, and it was held not to lie. And in the principal case judgment was arrested. *Str. 921.*

In like manner, *E. 11 G. K.* against *Weston* and others. There was an indictment against six jointly and severally for exercising a trade; and quashed, because there ought to be distinct indictments. *Str. 623.*

5. Larcenies committed of several things, though at several times, and from several persons, may be joined in one indictment. 2 H. H. 173.

V. Whether the grand jury may examine witnesses against the king.

Lord Hale says, that the grand jury at the assizes or sessions ought only to hear the evidence for the king, and in case there be probable evidence, they ought to find the bill, because it is but an accusation, and the party is to be put on his trial afterwards. 2 H. H. 157.

Which doctrine is also laid down by chief justice *Pemberton*, in the case of the earl of *Shaftsbury*, *St. Tr. V. 3. p. 415.*

But the learned editor of *Hale's History* observes upon this, that Sir *John Hawles* in his remarks on the said case, *St. Tr. V. 4. p. 183.* unanswerably shews, that a grand jury ought to have the same persuation of the truth of the indictment as a petty jury, or a coroner's inquest; for they are sworn to present the truth, and nothing but the truth.

And lord Coke says, that seeing indictments are the foundation of all, and are commonly found in the absence of the party accused, it is necessary there should be substantial proof. 3 Inst. 25.

VI. How many witnesses are requisite to an indictment.

An indictment may be found upon the oath of one witness only, unless it be for high treason, which requires two witnesses. 2 Haw. 256. And unless, in any instance, it be otherwise specially directed by act of parliament.

VII. Whether the grand jury may find an indictment specially.

It seems to be generally agreed, that the grand jury may not find part of an indictment to be true, and part false; but must either find a true bill or *ignoramus* for the whole; and that if they take upon them to find it specially, or conditionally, or to be true for part only, and not for the rest, the whole is void, and the party cannot be tried upon it, but ought to be indicted anew. 2 Haw. 210.

VIII. Indictment to be in English.

All indictments, informations, inquisitions and presentments, shall be in *English*, and be written in a common legible hand, and not court hand; on pain of 50 l. to him that shall sue in three months. 4 G. 2. c. 26. 6 G. 2. c. 14.

IX. Form of an indictment.

In order to understand this matter rightly it is judged requisite first to insert the intire form of an indictment, and then to take it in pieces, and explain the several parts of it in their order.

The instance which is chosen is on the statute of stabbing. 17. c. 8.

The *caption* of the indictment is no part of the indictment itself, but is the style or preamble, or return that is made from an inferior court to a superior, from whence a *certiorari* issues to remove; or when the whole record is made up in form; for whereas the record of the indictment,

ment, as it stands upon the file in the court where it is taken, is only thus: *The jurors for our lord the king upon their oath present; when this comes to be returned upon a certiorari, it is morefull and explicit, as follows: 2 H. H. 166.*

Westmorland. **A**T the general quarter sessions of the peace holden at Appleby in and for the county aforesaid, the seventh day of April in the first year of the reign of our sovereign lord George the third of Great Britain, France, and Ireland, king, defender of the faith, and so forth, Before J. P. and K. P. esquires, and others their associates, justices of our said lord the king, assigned to keep the peace of our said lord the king in the said county, and also to hear and determine divers felonies, trespasses, and other misdemeanors in the said county committed, by the oath of ——— good and lawful men of the county aforesaid, sworn and charged to inquire for our said lord the king, and for the body of the county aforesaid, it is presented:

That John Armstrong late of Appleby in the county aforesaid, yeoman, not having God before his eyes, but being moved and seduced by the instigation of the devil, on the thirtieth day of March in the first year of the reign of our said sovereign lord George the third of Great Britain, France, and Ireland, king, defender of the faith, and so forth, at the hour of nine in the afternoon of the same day, with force and arms, at Appleby aforesaid in the county aforesaid, in and upon one George Harrison in the peace of God and of our said lord the king then and there being (the aforesaid George Harrison not having any weapon then drawn, nor the aforesaid George Harrison having first stricken the said John Armstrong) feloniously did make an assault; and that the aforesaid John Armstrong, with a certain drawn sword of the value of five shillings, which he the said John Armstrong in his right hand then and there had and held, the said George Harrison in and upon the right side of the belly near the short ribs of him the said George Harrison (the aforesaid George Harrison as is aforesaid then and there not having any weapon drawn, nor the aforesaid George Harrison then and there having first stricken the said John Armstrong) then and there feloniously did stab and thrust, giving unto the said George Harrison then and there with the sword aforesaid, in form aforesaid, in and upon the right side of the belly near the short ribs of him the said George Harrison one mortal wound of the breadth of one inch, and of the depth of

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of nine inches; of which said mortal wound, he the said George Harrison then and there instantly died: And so the jurors aforesaid upon their oath aforesaid do say, that the said John Armstrong him the said George Harrison on the aforesaid thirtieth day of March in the year aforesaid, at Appleby aforesaid in the county aforesaid, in manner and form aforesaid, feloniously did kill; against the peace of our said lord the now king, his crown and dignity, and against the form of the statute in such case made and provided.

Westmorland] The name of the county must be in the margin, or repeated in the body of the caption. 2 H. H. 166.

At the general quarter sessions of the peace] The court where the indictment is made, must be expressed; otherwise the caption is erroneous. 1 H. H. 166. 2 Haw. 252.

Holden at Appleby in and for the county aforesaid] It must appear where the sessions was held; and that the place, where it was held, is within the extent of the commission. 2 H. H. 166.

The seventh day of April in the first year of the reign of our sovereign lord George the third] It hath been adjudged, that if the caption of the indictment describe the sessions holden in the time past, and not in the time present; or as holden on such a day in such a year of the king, without ascertaining what king, it is insufficient. But it seems to be agreed, that it is sufficient to express the year of the king, without adding that of our lord. 2 Haw. 255.

The seventh day] Figures to express numbers are not allowable in an indictment; but numbers must be expressed in words. 2 H. H. 170. Cr. Cir. 109. Andr. 137. H. 11 G. 2. K. and Haddock. Or at least in Roman numerals. Str. 261. H. 6 G. K. and Philips.

Before J. P. and K. P. esquires, and others their associates] It is not necessary to name all the justices, but only so many as are enabled to hold a sessions, and the rest may be supplied by the words *and others their associates*. 2 H. H. 167.

And altho' no sessions can be held without one of the justices being of the *quorum*, yet in the caption there need not be any mention which of them, or whether any of them, are of the *quorum*, for it is sufficient if *de facto* the sessions

sessions be held before him or them that are of the *quorum*, altho' not so mentioned, and so is the usual course. 2 H. H. 167.

And also to hear and determine, &c.] These words are necessary, because without this clause (by the commission) they cannot proceed by indictment. 2 H. H. 166. Str. 442.

By the oath] If the caption concludes that *it is presented* without saying *on their oath*, it shall be quashed; for their presentment must be upon oath, and so returned. 2 H. H. 168.

By the oath of ———] It must name the jurors that presented the offence; and therefore by the oath of *A. B. C. D.* and others, is not good; for it may be the presentment was by a less number than 12, or that some one of them was incapacitated who might influence all the rest, as for instance a person outlawed; in which case the indictment may be quashed by plea. 2 H. H. 167.

Good and lawful men of the county aforesaid] These words also, lord *Hale* saith, are necessary. 2 H. H. 167. But Mr. *Hawkins* says, they have been often over-ruled; because all men shall be intended to be honest and lawful, till the contrary appear. 2 Haw. 215.

Sworn and charged to inquire for our said lord the king, and for the body of the county aforesaid] These words also seem requisite to be inserted. 2 H. H. 167. But yet do not seem to be absolutely necessary. L. Raym. 710.

It is presented; that John Armstrong, late of Appleby in the county aforesaid, yeoman] The name of the party indicted regularly ought to be inserted, and inserted truly in every indictment. 2 H. H. 175.

But the inhabitants of a parish, may be indicted for not repairing the highway, although no person is particularly named. Wood, b. 4. c. 5.

It is said that no person indicted can take any advantage of a mistaken surname in the indictment, notwithstanding such surname hath no manner of affinity with its true one, and he was never known by it. 2 Haw. 230, 1, 2, 3. 2 H. H. 176.

But the mistake in the christian name is pleadable, and the party shall be dismissed from that indictment. 2 H. H. 176.

But

But the safest way is to allow his plea of *misnomer*, both as to his surname and as to his christian name, for he that pleads *misnomer* of either, must in the same plea set forth what his true name is, and then he concludes himself, and if the grand jury be not discharged, the indictment may presently be amended by the grand jury, and returned according to the name he gives himself. 2 H. H. 176.

Also an indictment naming the defendant by two christian names is not good. L. Raym. 562.

If the county is in the margin, and the indictment sets forth the act to be done at such a place in the county *aforsaid*, it is good, for it refers to the county in the margin; but if there be two counties named, one in the margin, and another in the addition of any party, or in the recital of an act of parliament the fact laid at such a place in the county *aforsaid*, vitiates the indictment, because two counties are named before, and therefore it is uncertain to which it refers. *Crown Car.* 115, 116.

By the 1 H. 5. c. 5. In all indictments on which process of outlawry lieth, to the names of the defendants *additions* shall be made of their estate, or degree, or military, and of the towns, or hamlets, or places, and counties where they were or be conversant.

But altho' the defendant be indicted by a wrong name or addition, or with no addition, yet if he appear, and plead not guilty, without taking advantage of that defect, he shall never alledge the *misnomer* or want of addition to stop his trial or judgment; for by such his appearance, and pleading to issue, the indictment is affirmed, and the *misnomer* or want of addition salved. 2 H. H. 176.

And if several persons be indicted for one offence, *misnomer* or want of addition of one, quasheth the indictment only against him, and the rest shall be put to answer; for they are in law as several indictments. 2 H. H. 177.

And it is the common practice, where an indictment is insufficient, while the grand jury is before the court, to amend it by their consent, in a matter of form as the name or addition of the party, or the like. 2 Haw. 245.

[Not having God before his eyes, but being moved and seduced by the instigation of the devil] I do not find it asserted by

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by any authority, that these words are necessary in an indictment.

On the thirtieth day of March in the first year of the reign, &c.] No indictment can be good, without precisely shewing a certain day of the material facts alledged in it. 2 *Haw.* 235.

And if the offence be done in the night, before midnight, the indictment shall suppose it to be done in the day before; and if it happen after midnight, then it must say, it was done that day after. *Lamb.* 492.

And altho' the day be inserted, yet if the year is not likewise inserted, the indictment is insufficient. 2 *H. H.* 177.

But where an indictment charges a man with a bare omission, as the not scouring such a ditch, it is said, that it needs not shew any time. 2 *Haw.* 236.

It is most regular to set forth the year, by shewing the year of the king; yet this may be dispensed with for special reasons, if the very year be otherwise sufficiently expressed. 2 *Haw.* 236.

And if it say, on such a day last past, without shewing in what year, that is good enough; for the certainty may be found out by the style of the sessions. *Lamb.* 491.

But tho' the day or year be mistaken in the indictment, yet if the offence were committed in the same county, tho' at another time, the offender ought to be found guilty; but then it may be requisite, if any escheat or forfeiture of land be conceived in the case, for the petit jury to find the true time of the offence committed; and therefore it is best in the indictment to set down the time as truly as can be, tho' it be not of absolute necessity to the defendant's conviction. 2 *H. H.* 179.

And this the rather, because the jury are to find the indictment upon their oaths. *Dalt. c.* 184.

Upon which ground, namely, because the jury are sworn to present the truth, it is best to lay all the facts in the indictment as near to the truth as may be; and not to say, in an indictment for a small assault (for instance) wherein the person assaulted received little or no bodily hurt, that such a one *with swords, staves, and pistols, beat, bruised and wounded him, so that his life was greatly endangered*; nor to say in an indictment for an highway being obstructed, that the king's subjects cannot go there-
on,

on, *without manifest danger of their lives*; and the like. Which kind of words, as they are not at all necessary, so they may stagger an honest man upon his oath, to find the fact as so laid.

At the hour of nine in the afternoon of the same day] It is not necessary to mention the hour, in an indictment. 2 Haw. 235.

With force and arms] By the 37 H. 8. c. 8. it is enacted, that whereas it had been commonly used in indictments, to put in the same words *vi & armis*, and in divers of the same indictments to declare the manner of the force and arms, viz. *baculis, cultellis, arcubus, & sagittis*, or such like, where in truth the parties had no manner of such weapons at the time of the offence committed; therefore for the future, these words, or such like, shall not of necessity be put in any inquisition or indictment.

But yet where such words are proper and pertinent, it is safe and adviseable to insert them, if it be to no other purpose than to aggravate the offence. 2 Haw. 242.

At Appleby aforesaid, in the county aforesaid] No indictment can be good, without expressly shewing some place wherein the offence was committed, which must appear to have been within the jurisdiction of the court. 2 Haw. 236.

But a mistake of the place will not be material upon the evidence, on not guilty pleaded, if the fact be proved at some other place in the same county. 2 Haw. 237.

And it is not sufficient that the county be expressed in the margent, but the vill where the offence was committed must be alledged to be in the county named in the margent, or, *in the county aforesaid*, which seems to be sufficient where but one county is named before, but to be uncertain where a county is named in the body of the indictment different from that in the margent. 2 Haw. 220. 2 H. H. 180.

In and upon one George Harrison] Wherever the person injured is known to the jurors, his name ought to be put in the indictment. 2 Haw. 232.

But if they know not his name, an indictment for the murder of a person unknown, or for stealing the goods of a person unknown, is good. 2 H. H. 181.

Also

Also there is no need of an addition of the person upon whom the offence is committed, unless there be a plurality of persons of the same name; neither then is it essential to the indictment, tho' sometimes it may be convenient for distinction sake to add it. 2 H. H. 182.

In the peace of God, and of our said lord the king, then and there being] It is usual to alledge this, but not necessary, and possibly not true, for he might be breaking the peace at the time. 2 H. H. 186.

The aforesaid George Harrison not having any weapon then drawn, nor the aforesaid George Harrison having first stricken the said John Armstrong] An indictment grounded upon an offence made by act of parliament, must by express words bring the offence within the substantial description made in the act of parliament; and those circumstances mentioned in the statute to make up the offence, shall not be supplied by the general conclusion against the form of the statute. 2 H. H. 170.

And so it is, if an act of parliament oust clergy in certain cases, as murder of malice forethought, robbery in or near the highway, though the offences themselves were at common law, yet because at common law within clergy, they shall not be ousted of clergy, though convicted, unless these circumstances, as of malice forethought, or near the highway, be expressed in the indictment. 2 H. H. 170.

But there is no necessity in an indictment on a publick statute, to recite such statute; for the judges are bound *ex officio* to take notice of all publick statutes. 2 Haw. 245.

Yet if the prosecutor take upon him to recite it, and materially vary from a substantial part of the purview of the statute, and conclude against the form of the statute aforesaid, he vitiates the indictment. 2 Haw. 246.

Also it seems to be generally agreed, that a misrecital of the place or day at which the parliament was holden, vitiates an indictment. 2 Haw. 246.

And it hath been adjudged, that a misrecital of the title of a statute is fatal. 2 Haw. 247.

But there is no need to alledge in an indictment, that the defendant is not within the benefit of the provisoes of the statute; although the same may be necessary in a conviction: for since no plea can be admitted to a conviction, and the defendant can have no remedy against it, but from an exception to some defect appearing in the face of it,
and

Indictment.

and all the proceedings are in a summary manner, it is but reasonable that such a conviction should have the highest certainty. 2 Haw. 250. 2 H. H. 170, 1.

Feloniously did make an assault] There are several words of art which the law hath appropriated for the description of the offence, which no circumlocution will supply; as *feloniously*, in the indictment of any felony; *burglariously*, in an indictment of burglary; and the like, 2 H. H. 184.

And if a man be indicted that he *stole*, and it is not said *feloniously*, this indictment imports but a trespass. 2 H. H. 172.

With a certain drawn sword] Yet if the party were killed with another weapon, it maintains the indictment; but if it were with another kind of death, as poisoning, or strangling, it doth not maintain the indictment upon evidence. 2 H. H. 185.

Of the value of five shillings] Regularly it ought to set forth the price of the sword or weapon, or else say of no value; for the weapon is a deodand forfeited to the king, and the township shall be charged for the value, if delivered to them; but this seems not to be essential to the indictment. 2 H. H. 185.

Which he the said John Armstrong in his right hand then and there had and held] It must shew in what hand he held his sword. 2 H. H. 185.

In and upon the right side of the belly near the short ribs of him the said George Harrison]. There must be a certainty of the offence committed, and nothing material shall be taken by intendment or implication; but the special manner of the whole fact ought to be set forth with certainty. 2 Haw. 225, 227.

And therefore in the case of murder, it ought to shew in what part of the body the person was wounded; and therefore if it be on his arm, or hand or side, without saying whether right or left, it is not good. 2 H. H. 185.

If theft be alledged in any thing, the indictment must set forth the value of the thing stolen; that it may appear, whether it be grand or petit larceny. 2 H. H. 183.

In like manner, an indictment that the defendant took and carried away such a person's goods and chattels, without shewing what in certain, as one horse, one cow, is not good. 2 H. H. 182.

An indictment that the defendant is a common highwayman, a common defamer, a common disturber of the peace, and the like, is not good; because it is too general, and contains not the particular matter wherein the offence was committed. 2 H. H. 182.

In like manner an indictment for divers scandalous, threatening and contemptuous words, spoken of a justice of the peace, is not good, but ought to set forth the words in special. Str. 699.

An indictment for disobeying an order of justices, must find positively, that such an order was made, and not by way of recital, *that whereas* ———. L. Raym. 1363.

But in an indictment on a conviction, it is not necessary to set forth the conviction at large, but only shortly that such a one was before such and such justices convicted, according to the form of the statute, and thereupon a warrant was issued, &c. L. Raym. 1196.

Then and there feloniously did stab and thrust] In an indictment it is best, and often necessary, to repeat the time and place, to the several parts of the fact. 2 H. H. 178.

Thus in an indictment of murder or manslaughter, as well the day and place of the stroke, or other act done, as of the death, must be expressed; the former, because the escheat or forfeiture of lands relates thereto; the latter, because it must appear that the death was within the year and day after the stroke. 2 H. H. 179.

One mortal wound of the breadth of one inch, and of the depth of nine inches] Regularly the length and depth of the wound is to be shewed; but this is not necessary in all cases, as namely, where a limb is cut off; so it may be also a dry blow. 2 H. H. 186.

But though the manner and place of the hurt and its nature be requisite, as to the formality of the indictment, and it is fit to be done as near the truth as may be; yet if upon evidence it appear to be another kind of wound in another place, if the party died of it, it is sufficient to maintain the indictment. 2 H. H. 186.

Against the peace of our said lord the king] An indictment without concluding against the peace, is insufficient, tho' it be but for using a trade not having been an apprentice; for every offence against a statute is against the peace, and ought so to be laid. 2 H. H. 188.

Indictment.

Also an indictment that concludes against the peace, and saith not of *our lord the king*, is insufficient. 2 H. H. 188.

Of our said lord the king] An indictment for an offence committed in the time of the *late king*, and concluding against the peace of the *present king*, is not sufficient. Burr. Mansf. 1901. K and Lookup.

His crown and dignity] An indictment need not conclude against his crown and dignity, though it be usual in many indictments. 2 H. H. 188.

And against the form of the statute in such case made and provided] Regularly, if a statute only make an offence, or alter an offence from one crime to another, as making a bare misdemeanor to become a felony, the indictment for such new-made offence, or new made felony, must conclude against the form of the statute, or otherwise it is insufficient. 2 H. H. 192.

But if a man be indicted for an offence, which was at common law, and concludes against the form of the statute, but in truth it is not brought by the indictment within the statute, it shall be quashed and the party shall not be put to answer it as an offence at common law. 2 H. H. 171.

And if an offence were felony at common law, but a special act of parliament ousts the offender of some benefit that the common law allowed him, when certain circumstances are in the fact; though the body of such indictment must express those circumstances, according as they are prescribed in the statute, yet the indictment need not conclude against the form of the statute: Thus on the statute of the 8 El. c. 4. in case of pick-pockets, the body of the indictment must bring them within the express purview of the statute, or otherwise they shall have the benefit of clergy; but it need not conclude against the form of the statute, neither is it useful in such cases, for it was felony before, and the statute doth not give a new punishment, nor make it to be a crime of another nature, but only takes away clergy. But yet, if it should conclude in such case against the form of the statute, it would not vitiate the indictment, but would be only surplusage. 2 H. H. 190.

If an act of parliament, making an offence, be but temporary, and made perpetual by another statute, the indictment

indictment concluding against the form of the *statute*, is good. 2 H. H. 173.

If the former statute be discontinued, and revived by another statute, the best way is to conclude against the form of the *statute*; though there is good opinion, that it is good enough to conclude against the form of the first statute. 2 H. H. 173.

If one statute be relative to another, as where the former makes the offence, and the latter adds a penalty; the indictment ought to conclude against the form of the *statutes*. 2 H. H. 173.

X. Charges of an indictment.

By the 10 & 11 W. c. 23. No clerk of assize, clerk of the peace, or other person, shall take any fee of any person bound over to give evidence against a traitor or felon, for the discharge of his recognizance; nor shall take more than 2s for drawing any bill of indictment against any such felon: On pain of 5l to the party grieved, with full costs. And if he draw a bill defective, he shall draw a new one *gratis*, on the like pain.

For the drawing of indictments for other misdemeanors, not being treason or felony, no fee is limited by any statute: And therefore the same dependeth upon the custom and ancient usage.

Condition of a recognizance to prefer a bill of indictment.

THE condition of this recognizance is such, That if the above bound A. I. shall personally appear at the next general quarter sessions of the peace to be holden at — in and for the said county, and then and there prefer a bill of indictment against A. O. late of — yeoman, for the felonious taking and carrying away of — the property of — and shall then and there give evidence concerning the same, to the jurors who shall inquire thereof on the part of our said lord the king: And in case the same be found a true bill, Then if the said A. I. shall personally appear before the jurors who shall pass upon the trial of the said A. O. and give evidence upon the said indictment, and not depart without leave of the court, Then this recognizance to be void.

Condition of a recognizance to answer to an indictment.

THE condition of this recognizance is such, That if the above bound A. O. shall personally appear at the next general quarter sessions of the peace to be holden at — in and for the said county, then and there to answer to an indictment to be preferred against him by A. I. of — yeoman, for assaulting and beating him the said A. I. and not depart without leave of the court, Then this recognizance to be void.

Infants.

Infant, who.

Committing a crime under 14.

1. **B**Y an infant, or minor, is meant any one who is under the age of 21 years. 1 *Inst.* 2.

2. It is said generally, that those who are under a natural disability of distinguishing between good and evil, as infants under the age of 14 years, which is called the age of discretion, are not punishable by any criminal prosecution whatsoever. But this must be understood with some allowance; for if it appear by the circumstances, that an infant under the age of discretion, could distinguish between good and evil, as if one of the age of nine or ten years, kill another and hide the body, or make excuses, or hide himself, he may be convicted and condemned, and forfeit as much as if he were of full age: But in such case the judges will in prudence respite the execution, in order to get a pardon; and it is said, that if an infant apparently wanting discretion, be indicted and found guilty of felony, the justices themselves may dismiss him without a pardon. And in general it must be left to the discretion of the judge, upon the circumstances of the case, how far an infant, under that age, is *capax deli*, or hath knowledge to discern betwixt good and evil. *Hale's Pl.* 43. 1 *Harr.* 2. 1 *H. H.* 18.

A remarkable instance of this kind we have in the case of *William York*. At *Bury* summer assizes 1748, *William York*, a boy of ten years of age was convicted before lord chief justice *Willes*, for the murder of a girl of about five years of age; and received sentence of death. But the chief justice, out of regard to the tender years of the prisoner,

prisoner, respited execution, till he should have an opportunity of taking the opinion of the rest of the judges, whether it was proper to execute him or not, upon the special circumstances of the case; which he reported to the judges as follows. The boy and girl were parish children, but under the care of a parishioner, at whose house they were lodged and maintained. On the day the murder happened, the man of the house and his wife went out to their work early in the morning, and left the children in bed together. When they returned from work the girl was missing; and the boy being asked what was become of her, answered, that he had helped her up, and put on her clothes, and that she was gone he knew not whither. Upon this, strict search was made in the ditches and pools of water near the house, from an apprehension that the child might have fallen into the water. During this search, the man under whose care the children were, observed that a heap of dung near the house had been newly turned up. And upon removing the upper part of the heap he found the body of the child, about a foot's depth under the surface, cut and mangled in a most barbarous and horrid manner. Upon this discovery, the boy, who was the only person capable of committing the fact, that was left at home with the child, was charged with the fact, which he stiffly denied. When the coroner's jury met, the boy was again charged, but persisted still to deny the fact. At length being closely interrogated, he fell to crying, and said he would tell the whole truth. He then said, that the child had been used to foul herself in bed; that she did so that morning (which was not true, for the bed was searched and found to be clean); that thereupon he took her out of the bed and carried her to the dung heap; and with a large knife, which he found about the house, cut her in the manner the body appeared to be mangled, and buried her in the dung heap; placing the dung and straw that was bloody under the body, and covering it up with what was clean; and having so done, he got water and washed himself as clean as he could. The boy was the next morning carried before a neighbouring justice, before whom he repeated his confession, with all the circumstances he had related to the coroner and his jury. The justice very prudently deferred proceeding to a commitment, till the boy should have an opportunity of recollecting himself. Accordingly he warned him of the danger he was in, if he should be thought guilty of the fact he stood charged

with, and admonished him not to wrong himself; and then ordered him into a room, where none of the crowd that attended should have access to him. When the boy had been some hours in this room, where victuals and drink were provided for him, he was brought a second time before the justice, and then he repeated his former confession: Upon which he was committed to gaol. On the trial, evidence was given of the declarations before mentioned to have been made before the coroner and his jury, and before the justice; and of many declarations to the same purpose, which the boy made to other people after he came to gaol, and even down to the day of his trial. For he constantly told the same story in substance, commonly adding that the devil put him upon committing the fact. Upon this evidence, with some other circumstances tending to corroborate the confession, he was convicted. Upon this report of the chief justice, the judges having taken time to consider of it, unanimously agreed, 1. That the declarations stated in the report were evidence proper to be left to the jury. 2. That supposing the boy to have been guilty of the fact, there are so many circumstances stated in the report which are undoubtedly tokens of what lord chief justice *Hale* somewhere calleth a *mischievous discretion*, that he is certainly a proper object for capital punishment, and ought to suffer. For it would be of very dangerous consequence to have it thought, that children may commit such atrocious crimes with impunity. There are many crimes of the most heinous nature, such as in the present case the murder of young children, poisoning parents or masters, burning houses, and the like, which children are very capable of committing, and which they may in some circumstances be under strong temptations to commit; and therefore, tho' the taking away the life of a boy of ten years old may favour of cruelty, yet as the example of this boy's punishment may be a means of deterring other children from the like offences, and as the sparing this boy merely on account of his age will probably have a quite contrary tendency,——in justice to the publick, the law ought to take its course, unless there remaineth any doubt touching his guilt. In this general principle all the judges concurred. But two or three of them, out of great tenderness and caution, advised the chief justice to send another reprieve for the prisoner; suggesting that it might possibly appear on further inquiry, that the boy had taken this matter upon himself, at the instigation of
some

some person or other, who hoped by this artifice to screen the real offender from justice. Accordingly, the chief justice did grant one or two more reprieves; and desired the justice who took the boy's examination, and also some other persons in whose prudence he could confide, to make the strictest inquiry they could into the affair, and make report to him. At length he receiving no further light, determined to send no more reprieves, and to leave the prisoner to the justice of the law at the expiration of the last. But before the expiration of that reprieve, execution was respited till further order, by warrant from one of the secretaries of state. And at the summer assizes 1757, he had the benefit of his majesty's pardon, upon condition of his entring immediately into the sea service. *Foff. 70.*

3. But within seven years of age, there can be no guilt Under seven; whatsoever of any capital offence; the infant may be chastized by his parents or tutors, but cannot be capitally punished, because he cannot be guilty; and if he be indicted for such an offence as is in its nature capital, he must be acquitted. *1 H. H. 19, 20.*

4. An infant under 14, is presumed by law, unable to Committing a commit a rape, and therefore it seems cannot be guilty of rape. it; and though in other felonies *malitia supplet aetatem* in some cases, yet it seems as to this fact the law presumes him impotent, as well as wanting discretion. *1 H. H. 630.*

5. An infant may be guilty of forcible entry, in respect Forcible entry; of personal actual violence. *1 Haw. 147.* And the justices may fine him therefore: But yet it shall be good discretion in the justices of the peace, to forbear the imprisonment of such infant. *Dalt. c. 126.*

Because it is said, that he shall not be subject to corporal punishment, by force of the general words of any statute, wherein he is not expressly named. *1 Haw. 147.*

6. But if one who wants discretion, commit a trespass, Shall be liable to damages for trespass. against the person or possession of another, he shall nevertheless be compelled in a civil action to give satisfaction for the damage. *1 Haw. 2. 1 H. H. 15, 16.*

7. An infant may bring an appeal, although it take May bring an appeal. from the defendant the benefit of waging battle; but he must prosecute such appeal by a guardian. *2 Haw. 161, 162.*

An appeal likewise may be brought against him. *2 Haw. 168.*

Cannot be an approver.

8. An infant under the age of discretion cannot be an approver; because he cannot take the oath requisite in that case. 2 *Haw.* 205.

How far he may be a witness,

9. In case of rape committed upon a child of 12 years old, such child may be sworn as evidence; yea if she be under that age, if it appear to the court that she knows and considers the obligation of an oath, she may be sworn. And in case of evidence against witches, an infant of nine years old was sworn. 1 *H. H.* 634. *Dalt.* 378.

Whether he may be a juror.

10. An infant before 21 years of age shall not be sworn in an inquest. 7 *W. c.* 32. *f.* 4. 1 *Inst.* 172.

Woman's age of dower, marriage, and chusing guardian.

11. A woman at 9 years of age may have dower; at 12 may consent to marriage; and at 14 is of age of discretion, and may chuse a guardian. 1 *Inst.* 78.

Man's age of allegiance, marriage, and chusing guardian.

12. A man is of age at 12 years to take the oath of allegiance in the torn or leet; and at 14 is of age of discretion, may consent to marriage, and chuse his guardian. 1 *Inst.* 78.

Cannot make a deed.

13. At 21, and not before, persons may bind themselves by any deed, and alien lands, goods and chattels. 1 *Inst.* 171.

Nor enter into recognizance.

14. Upon which ground infants may not enter into recognizance to keep the peace, or to be of the good behaviour, but their sureties only.

May contract for necessities.

15. But an infant may bind himself to pay for his necessary meat, drink, apparel, physick, and such like; and also for his good teaching or instruction, whereby he may profit himself afterwards; but if he binds himself in an obligation or other writing, with a penalty for the payment of any of these, that obligation shall not bind him. 1 *Inst.* 172.

And in *Earl's* case, 1 *Salk.* 387. it is said, that an infant may buy necessities, but cannot borrow money to buy; for he may misapply the money, and therefore the law will not trust him, but at the peril of the lender, who must lay it out for him, or see it laid out.

And it shall be only for necessities, and not for matters of luxury or extravagance; and if after he comes of age he is prevailed on, by surprize or other undue means, to give security, yet a court of equity on consideration of circumstances will relieve. 2 *Atk.* 35.

May present to a benefice.

16. Also other things of necessity shall bind him, as a presentation to a benefice; for otherwise the lapse shall incur against him. 1 *Inst.* 172.

17. And

17. And infants seised of estates in trust, or by way of mortgage, may make conveyances thereof, as the courts of chancery or exchequer shall direct. 7 *An. c.* 19. 4 *G.* 3.

May convey in a court of equity.

c. 16.

18. And they may surrender leases in the courts of chancery or exchequer, in order to renew the same. 29 *G.* 2.

May surrender in a court of equity.

c. 31.

19. Also an infant hath, without consent of any other, capacity to purchase, for it is intended for his benefit; and at his full age, he may either agree thereunto, and perfect it, or without any cause to be alledged, waive, or disagree to the purchase: And so may his heirs after him, if he agree not thereunto after his full age.

May purchase.

1 *Inst.* 2.

20. The common law seems not to have determined precisely, at what age one may make a testament of a personal estate: It is generally allowed, that it may be made at the age of 18, and some say under, for the common law will not prohibit the spiritual court in such cases.

May make a will.

1 *Inst.* 89. 1 *H. H.* 17.

The age of discretion is 14; and therefore it may seem that one may make a testament of personal estate at that age.

May be an executor.

21. A person is of age to be an executor at 17; and an administration of any one during the minority of an infant, ceaseth when the infant comes to that age. 5 *Co.* *Pigot's case.* 1 *H. H.* 17.

22. Any person having child or children, under 21 years of age, and not married, may by deed or will attested by two witnesses, dispose of the custody and tuition of such child or children, until they shall be of the age of 21, or for a lesser time; and this, whether such parent be within or above the age of 21. 12 *C.* 2. *c.* 24.

May bequeath the tuition of his children.

f. 8.

23. An infant cannot answer but by guardian; but he may sue either by his next friend or by guardian. 3 *Salk.* 196.

May sue by prochein amy.

24. If an infant of the age of 17 years release a debt, this is void; but if an infant make the debtor his executor, this is a good release in law of the action.

In what case he may release a debt.

1 *Inst.* 264.

25. By the 5 *El. c.* 4. Persons above the age of 10 years by their own consent and agreement, may be bound apprentices.

At what age he may be bound apprentice.

And by the 5 *El. c.* 5. Any person, above seven years old, may be bound apprentice to the sea-service.

By

Infants.

By the 43 *El. c. 2.* No age is limited for the binding of parish apprentices; so that it seemeth they may be bound at the age of seven, when they cease to be nurse children, and consequently may be taken from the mother.

Infant apprentice embezzling goods.

26. It shall be felony without benefit of clergy, to steal goods to the value of 40s out of an house, though the house be not broken open; but this shall not extend to apprentices under 15 years of age. 12 *An.*

§. 1. c. 7.

Infant servant embezzling goods.

27. Servants above the age of 18, imbezling their master's goods to the value of 40s, shall be punished as felons. 21 *H. 8. c. 7.*

Information.

Information at the suit of the king.

1. Informations are of two kinds; 1. Such as are merely at the suit of the king: And, 2. Such as are partly the suit of the king, and partly the suit of the party; which are commonly called informations *qui tam*, from those words in the information when the proceedings were in *Latin*, *qui tam pro domino rege quam pro seipso*, &c. 2 *Haw. 259.*

At the suit of the party.

Private action upon a statute.

2. Of near affinity to an information *qui tam*, is an action upon the statute: which is either a *private* action, which is, when an action is given upon a statute to the king, and to the *party grieved* only; or, a *popular* action, which is, where the action is given to the *people* in general, that is, to any one that will sue for the king, and for himself.

Action popular.

In what case the king may have the whole penalty.

3. But if the king commenceth his suit before the informer, the king shall have the whole forfeiture (because in such case he also is the informer); and he may, before the informer begins his suit, release the penalty to the offender, and bar all others; but after a popular action is brought by the informer, the king's attorney will enter *ulterius non vult prosequi*, the informer may prosecute for his part. *Wood. b. 4. c. 4.*

In what cases an information will lie.

4. Where a matter concerns the publick government, and no particular person is intitled to an action, there an information will lie. 18 *El. c. 5. §. 1.* 1 *Salk. 374.*

5. An information lies, at the *common law*, for a great variety of crimes less than capital, as batteries, cheats, perjuries, riots, extortions, nuisances, contempts, and such like; and also it lies in very many cases by *statute*, wherein the offender is liable to a fine or other penalty. *Finch.* 340. 2 *Haw.* 260.

6. And in general, it seems that of common right an information *at the suit of the king*, or an action in the nature thereof, may be brought for offences against statutes, whether they be mentioned by such statutes or not, unless other methods of proceeding be particularly appointed, by which all others are impliedly excluded. 2 *Haw.* 260.

7. But an information or action *qui tam* will not lie on any statute, which prohibits a thing as being an immediate offence against the publick good in general, under a certain penalty, unless the whole or part of such penalty be expressly given to him who shall sue for it; because otherwise it goes to the king, and nothing can be demanded by the party: But where such statute gives any part of such penalty to him who will sue for it by action or information, any one may bring such action or information, and lay his demand, *as well for our lord the king, as for himself.* 2 *Haw.* 256.

8. Also where a statute prohibits or commands a thing, the doing or omission whereof is an immediate danger to the party, and also highly concerns the peace, safety, or good government of the publick, or the honour of the king, or of his supreme courts of justice, it seems to be the general opinion, that the party grieved may bring his action *qui tam* on such statute. 2 *Haw.* 265.

9. By the 31 El. c. 5. *All actions, suits, bills, indictments, or informations on any penal statute, whereby the forfeiture is limited to the king, shall be brought within two years after the offence committed; if limited to the king, and to any other who shall prosecute, then within one year; and in default of such prosecution, then to be brought for the king, in two years after that year ended. Provided, that if they are limited by statute to be brought within shorter time, then they shall be brought within such time limited.* s. 5, 6.

In what time
it shall be
brought.

On any penal statute] But if an offence prohibited by a penal statute, be also an offence at common law; the prosecution of it, as of an offence at common law, is no way restrained hereby. 2 *Haw.* 272.

Information.

To any other who shall prosecute] That is, to a common informer; and therefore the party grieved is not within the restraint of this statute, but may sue in the same manner as before. 2 *Haw.* 272.

Two informations on the same day.

10. If two informations be exhibited on the same day, for the same offence, they mutually abate one another. 2 *Haw.* 275.

In what county it shall be laid.

11. By the 21 J. c. 4. *All offences against any penal statute, for which any common informer may ground a popular action, bill, plaint, suit, or information, before the judges of assize, or justices of the peace in their general or quarter sessions (having power to hear and determine the same), shall be prosecuted in the county where they were committed, and not elsewhere: and if the offence is not proved to have been committed in the same county, the defendant shall be found not guilty.* s. 1, 2.

Provided that informations, suits, or actions, against popish recusants, or persons charged with maintenance, champerty, or buying of titles, may be laid in any county. s. 5.

Against any penal statute] H. 8 W. K. and Gaul. Holt Ch. J. said, ten judges had agreed that this statute doth not extend to any offence created since; so that prosecutions on subsequent penal statutes are not restrained thereby; but this statute is as to them, as it were repealed *pro tanto*. 1 Salk. 372.

For which any common informer may ground a popular action] Therefore this extends not to any suit by a party grieved, or by the attorney general; but only to those brought by common informers. 2 *Haw.* 269, 270.

General or quarter sessions, having power to hear and determine the same] Yet this gives no jurisdiction to justices of the peace, which they had not before; but only appoints, that where informations might have been brought in the courts at *Westminster* or before justices of the peace, such informations shall be now brought before justices of the peace only. *Cro. Car.* 112.

In the county where they were committed] H. 7 G. Smith and Potter. In the king's bench. In a *qui tam* on the 5 Eliz. for exercising a trade, without an apprenticeship, it was moved to stay the proceedings, because the nominal plaintiff had released, and the fact was laid at *Cambridge*, whereas the jurisdiction of the king's bench is

at

at last settled to be restrained by the 21 J. c. 4. to actions arising in the county where the king's bench sits, so that if they were to go on to trial, the plaintiff could have no effect of his suit. And of this opinion was the court, and they made a rule that proceedings should be stayed. *Str.* 415.

And not elsewhere] But where a subsequent statute gives a remedy for the recovery of a penalty in any court of record generally, it so far impliedly repeals this restraint, and consequently leaves the informer at his liberty to sue in the courts at Westminster. 2 *Haw.* 270.

Also, where a statute limits suits by an informer *qui tam*, to other courts than those of *Westminster hall*; yet any one may, by construction of law, exhibit an information in the exchequer, for the whole penalty, for the use of the king. 2 *Haw.* 268.

12. If jurisdiction be given to the sessions to hear and determine, and it is not said by information; this shall be by indictment, and not information. *Cro. Car.*

Sessions hath not power without express words.

112.

13. By the 18 El. c. 5. *Upon every information which shall be exhibited by a (common) informer, except for maintenance, champerty, buying of titles, or embracery; a note shall be made of the day, month, and year of the exhibiting thereof; and it shall be taken to be of record from that time forward and not before: and no process shall be issued on such information, till it be exhibited in form aforesaid.* s. 1.

Time of exhibiting the information to be entered.

14. And by the 21 J. c. 4. *No officer shall enter any information, bill or plaint, count or declaration, till the informer hath made oath before some of the judges of the court, that the offence was not committed in any other county, and that he believeth in his conscience, that the offence was committed within a year before the information or suit; the oath to be there entered of record.* s. 3.

Oath to be made on exhibiting the information.

15. And in the court of king's bench, *the clerk of the crown shall not (except by order of court) exhibit or receive any information in the name of the master of the crown office, for trespasses, batteries, or other misdemeanors, or issue any process thereupon, before he shall have taken, or shall have delivered to him a recognizance from the prosecutor, with his place of abode, title, or profession to be entered,—to the person against whom the information is exhibited, in the penalty of 20l, that he will effectually prosecute such information, and abide by and observe such orders as the said court shall direct;*

Recognizance to be given.

direct; which recognizance the said clerk of the crown, and also every justice of the peace where the cause of such information shall arise, are impowered to take; after the taking or receipt whereof, he shall make an entry thereof upon record, and shall file a memorandum thereof in some publick place in his office, to which all persons may resort without fee. 21 J. c. 4. s. 2, 6.

In the name of the master of the crown office] From hence it follows, that informations exhibited by the attorney general, remain as they were at the common law. 2 Haw. 262.

Rule to shew
cause,

16. And the general practice of the court of king's bench is, not to order an information to be filed, without first making a rule upon the defendant to shew cause to the contrary. And this rule is never granted but upon motion in open court, grounded upon affidavit of some offence of an enormous kind, or dangerous tendency. The defendant must be personally served with the rule, and if he do not at the day given for that purpose satisfy the court by affidavits, that the substance of the charge is false or frivolous, or other reasonable cause against the prosecution, the court usually grants the information. *Barl. Inform.*

Process on an
Information.

17. By the 21 J. c. 4. *The like process shall be awarded, upon an information by a common informer, as in an action of trespass vi & armis at the common law.* s. 1.

And consequently, the process in all such suits must be by attachment, or *pone per vadios*, and after by distress infinite, where by the return the party appears to be sufficient, otherwise by *capias*. 2 Haw. 284.

Process to be in-
dorsed,

18. And on every process upon an information by a common informer, shall be indorsed as well the party's name that pursueth the process, as also the statute upon which the information is grounded. 18 El. c. 5. s. 1.

Process on a cri-
minal informa-
tion.

19. But on a criminal information, it is the usual practice of the crown office, first, to award a *subpoena*; and after the return thereof, if no appearance be entred in four days, and an affidavit be made of the service of the *subpoena*, to make out a *capias* of course, where the defendants are informed against in their private capacity, and a *disringas*, where they are sued as a corporation aggregate. 2 Haw. 284.

General issue.

20. If any information, suit, or action, shall be brought against any person on a penal statute, the defendant may plead the

the general issue, and give the special matter in evidence.

21 J. c. 4. l. 4.

21. The court will not generally quash an information upon motion, but the party must either plead, demur, or move in arrest of judgment. 1 Salk. 372. Str. 185, 953.

Information not quashed upon motion.

22. But seeing that an information differs from an indictment in little more than this, that the one is found by the oath of 12 men, and the other is not so found but is only the allegation of the officer or person who exhibits it; whatsoever certainty is required in an indictment, the same at least is necessary also in an information; and consequently as all the material parts of the crime must be precisely found in the one, so must they be precisely alleged in the other, and not by way of argument or recital. 2 Haw. 260, 1.

Certainty required in an information.

23. And therefore the statutes of jeofails (from *J'ay faillé*, I have failed), or the statutes that do remedy oversights in pleading, extend not to informations. Wood. b. 4. c. 4.

Not aided by the Statutes of jeofails.

24. If an information contain several offences against a statute, and be well laid as to some of them, but defective as to the rest, the informer may have judgment for so much as is well laid. 2 Haw. 266.

Information good as to part.

25. Generally, if a (common) informer shall willingly delay his suit, or discontinue, or be nonsuit, or shall have a verdict or judgment against him, he shall pay costs to the defendant. 18 El. c. 5. l. 3.

Costs against the plaintiff.

And in the court of king's bench, particularly, if the defendant shall appear and plead to issue, and the prosecutor shall not at his own costs, within a year after issue joined, procure the same to be tried, or if a verdict passes for the defendant, or the informer procure a noli prosequi to be entered, the said court of king's bench may award the defendant his costs, unless the judge shall certify that there was a reasonable cause for exhibiting such information. And if the informer shall not, in three months after such costs taxed, and demand made, pay the same, the defendant shall have the benefit of the recognizance above mentioned, to compel him thereunto. 4 & 5 W. c. 18. l. 2.

Unless the judge shall certify] E. 13 G. 2. K. and Woodfall. Upon trial of an information for a libel, the jury, acquitted the defendant contrary to the direction of the court. Upon which the defendant moved above for costs on this statute, which provides, that in cases where the defendant

defendant is acquitted, the court is authorized to award costs to the defendant, unless the judge shall at the trial certify there was a reasonable cause. In this case, no such certificate was asked; but it was insisted on for the prosecutor, that it was discretionary in the court. The chief justice certified *ore tenus*, that it was a verdict against evidence; but then he and all the others held, that it was now too late to inquire into the probable cause; and that, it was not discretionary, but compulsory upon them, where there was no certificate. So the defendant had his costs. *Str.* 1131.

Costs against the defendant.

26. But it seems to be in a great measure settled, that, an *informer* upon a popular statute shall in no case whatsoever have his costs, unless they be expressly given him by such statute; for it is certain, that he cannot recover them by the common law, for that doth not give costs in any case; neither can he recover them by the statute of *Gloucester*, which gives the demandant his costs in all cases wherein he shall recover his damages; for this seems to suppose some damage to have been done to the demandant in particular, which cannot be said in any popular action. But it seems agreed, that an action on a statute by the party grieved, for a certain penalty given by such statute, is within the statute of *Gloucester*, because such penalty is intended him by way of recompence for his particular damage by the offence prohibited: and if he could recover that only, and no more by way of costs, it would be in most cases in vain for him to sue for it, since the costs of suit would exceed it. But it is said, that no costs shall be recovered in an action on a statute, which gives no certain penalty to the party grieved, but only his damages in general, if such a statute be introductive of a new law, and give a remedy in a point not remediable at the common law: but there is not that inconvenience in this case, as in the former; because no certain sum being specified, the jury may give the plaintiff a full satisfaction by way of damages. 2 *Haw.* 274.

Informer compounding.

27. No (common) informer shall compound or agree with the defendant, but after answer made in court, nor after answer, but by the order or consent of the court; on pain of being set on the pillory, in some market town next adjoining, in open market, for two hours, and of being disabled to be informer on any penal statute, and also of forfeiting 10 l. half to the king, and half to the party grieved, to be recovered in any court of record, by action of debt or information.

tion. And the justices of assize, and justices of the peace in sessions, may hear and determine all offences against this act. 18 El. c. 5. s. 4.

28. And if the defendant plead a recovery by a former action, which former action shall be found to have been collusive; the plaintiff shall recover, as though no such action before had been had: and if the defendant shall be convicted of such collusion, he shall be imprisoned two years, by process of capias and outlawry, and that as well at the king's suit, as of every other that will sue. 4 H. 7. c. 20. Collusive action,

And no release of any common person, to any such party, whether before or after any action popular, or indictment of the same commenced or made, hanging the same action, shall be available to surcease the said action, indictment, process, or execution. id.

Form of an information qui tam.

Westmorland. **B**E it remembred, that A. I. of — in the county of — gentleman, who as well for our lord the now king as for himself doth prosecute, cometh before the justices of our said lord the king assigned to keep the peace in the said county, and also to hear and determine divers felonies, trespasses, and other misdemeanors in the said county committed, at their general quarter sessions of the peace holden at — in and for the said county, the — day of — in the — year of the reign of — in his proper person; and as well for the same lord the king, as for himself, giveth the court here to understand and be informed, That A. O. late of — in the county aforesaid yeoman, on the — day of — in the year aforesaid, at — aforesaid, in the county aforesaid, not regarding the laws and statutes of our said lord the king, but intending to — with force and arms [Here insert the offence with the same precision as in an indictment] against the form of the statute in that case made and provided: Whereupon the aforesaid A. I. as well for the said lord the king, as for himself, prayeth the advice of this court in the premises; and that the aforesaid A. O. may forfeit the sum of — according to the form of the statute aforesaid; and that he the same A. I. may have one moiety thereof, according to the form of the statute aforesaid; and also that the aforesaid A. O. may come here into this court, to answer concerning the premises; and there are pledges of prosecuting, John Doe and Richard Roe. And hereupon it is commanded to the said A. O. that all other

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Information.

things omitted, and all excuses laid aside, he be in his proper person at the next general quarter sessions of the peace to be holden for the said county, to answer as well to our said lord the king, as to the said A. I. who as well for the said lord the king, as for himself, doth prosecute, of and concerning the premisses, and further to do and receive what the said court shall consider in this behalf.

Ingrossing. See **Forestalling.**

Inns, Innkeepers. See **Alehouses.**

Insolvent debtors. See **Debtors.**

Inrollment.

NO manors, lands, tenements, or hereditaments shall pass from one to another, whereby any estate of inheritance or freehold shall be made or take effect in any person, or any use thereof to be made by reason only of any bargain and sale thereof, except the same bargain and sale be made by writing indented, sealed, and inrolled in one of the king's courts of record at *Westminster*; or else within the county where the lands lie, before the *custos rotulorum*, and two justices, and the clerk of the peace, or two of them at the least, whereof the clerk of the peace to be one: the same inrollment to be made in six months after date of the writings. Paying, where the land exceeds not 40 s a year, 2 s; to wit, 12 d to the justices, and 12 d to the clerk; and where it exceeds 40 s a year, then paying 5 s, half to the justices, and half to the clerk: and the clerk of the peace shall inroll and ingross the same in parchment: The same to be kept amongst the records of the county. 27 H. 8. c. 16.

In the counties of *Lancaster*, *Chester*, and *Durham*, they may be inrolled in the respective courts there, or at the assizes. 5 El. c. 26.

The inrolling of deeds and wills of papists, belongs to title **Popery.**

Judgment.

Judgment.

1. **O**F judgments, some are fixed and stated; as in Judgments certain. cases of treason, felony, præmunire, and misprision; the particular forms of which may be seen under their respective titles.

2. Others are discretionary and variable, according to Judgments variable. the different circumstances of each case: Thus for crimes of an infamous nature, such as petit larceny, perjury, or forgery at common law, gross cheats, conspiracy not requiring a villainous judgment, keeping a bawdy-house, bribing witnesses to stifle their evidence, and other offences of the like nature; it seems to be in a great measure left to the prudence of the court to inflict such corporal punishment, and also such fine, and binding to the good behaviour for a certain time, as shall seem most proper and adequate to the offence. 1 *Haw.* 445.

3. The court may assess a fine, but cannot award any Judgment in the offender's absence. corporal punishment against a defendant, unless he be actually present in court. 2 *Haw.* 446.

4. Where there are several defendants, a joint award of Judgment of a joint fine. one fine against them all, is erroneous; for it ought to be several against each defendant; for otherwise, one who hath paid his proportionable part, might be continued in prison till all the others have also paid theirs, which would be in effect to punish him for the offence of another. 2 *Haw.* 446.

5. A fine is under the power of the court, during the Judgment in mitigation of fines. term in which it is set; and may be mitigated as shall be thought proper; but after the term, it admits of no alteration. 2 *Haw.* 446.

6. A judgment contrary to the verdict is void. *Read.* Judgment against the verdict.

7. By many statutes peculiar punishments are appointed for several offences, as pillory, stocks, imprisonment, and the like; and in all these cases, no room is left for the justices discretion, for they ought to give judgment, and to inflict the punishment in all the circumstances thereof, as such statutes do direct. *Dalt.* c. 188.

Jurors.

NOTE; The statutes of the 4 & 5 *W. c. 24.* and 7 & 8 *W. c. 32.* hereafter following, were at first but temporary; but are referred to, and as it were adopted by the 3 *G. 2. c. 25.* Which act of the 3 *G. 2. c. 25.* is made perpetual by the 6 *G. 2. c. 37.* And all the said three acts of 4 & 5 *W. 7 & 8 W.* and 3 *G. 2.* are required to be read at every *Midsummer* sessions.

Trial by juries is the *Englishman's* birth right, and is that happy way of trial, which notwithstanding all revolutions of times, hath been continued beyond all memory to this present day; the beginning whereof no history specifies, it being contemporary with the foundation of this state, and one of the pillars of it, both as to age and consequence. *Tr. p. pais 3. Dalt. c. 186.*

Concerning which I will treat in the order following :

I. Who may or may not be jurors.

II. Of making and returning lists of jurors.

III. Of the sheriff's summoning and returning jurors.

IV. Of the challenge of jurors.

V. Of the demeanor of jurors in giving their verdict.

VI. Of the indemnity and punishment of jurors.

I. Who may or may not be jurors.

Grand jurymen. 1. Mr. *Hawkins* says, it doth not seem to be any where holden, that none but freeholders ought to be returned on a grand jury. 2 *Haw. 216, 217.*

But in another place he says, that by the common law, every grand jurymen ought to be a freeman. 1 *Haw. 215.*

And L. *Hale* says, touching the yearly value of the estate of a grand jurymen, he doth not find any thing determined; but freeholders they ought to be. 2 *H. H.*

155.

But

But in *Yorkshire*, they are to have 80 l. a year, freehold or copyhold. 7 & 8 W. c. 32. s. 8.

Also a grand jurymen must be a lawful liege subject; and consequently, neither under attainder of any treason or felony, nor an alien, nor outlawed, whether for a criminal matter, or as some say, in a personal action; and from hence it seems, that any one who is under a prosecution for any crime, may by the common law, before he is indicted, challenge any of the persons returned on the grand jury, for the defect of any of the qualifications abovesaid. 1 Haw. 215.

The grand jury ought not to consist of an indefinite number; for no more ought to be sworn than twenty-three. For if a number amounting to two full juries or more, should be sworn, it might happen that a complete jury of twelve might find a bill to be true, though other twelve or more of the same jury might reject it as untrue; which would be inconvenient and absurd. *Burrow, Mansfield.* 1088.

2. In the courts at *Westminster*, and city of *London*, the jurors should be householders within the city, and have lands, tenements, or personal estates, to the value of 100 l. Jurymen in the courts at Westminster.

3 G. 2. c. 25. s. 19, 20.

And by the 4 G. 2. c. 7. s. 3. Leaseholders in the county of *Middlesex*, where the improved rents or value shall amount to 50 l a year, over and above the ground rent or other reservations, shall be liable to serve on juries.

3. At the assizes or sessions in the country, every juror, other than strangers *per medietatem linguæ* in *England*, shall have in his own name, or in trust for him, within the county, 10 l a year, and in *Wales* 6 l a year, above reprises, of freehold or copyhold lands or tenements, or of lands and tenements of ancient demesne, or in rents, or in all or any of them, in fee simple, fee tail, or for the life of themselves, or some other person: and if any of a lesser estate be returned, he may be discharged upon challenge, or on his own oath. 4 & 5 W. c. 24. s. 15. At the assizes or sessions.

3 G. 2. c. 25. s. 20.

And by the 3 G. 2. c. 25. s. 18. Persons having an estate in possession in land in their own right, of 20 l a year above the reserved rent, being held by lease for 500 years or more, or for 99 years, or any other term, determinable on one or more lives, shall be liable to serve on juries.

From hence it appears, that lands *freehold, copyhold, ancient demesne, or leasehold*, do render persons liable to serve on juries. And some have thought that all lands are included under these denominations. And in *Coke's copyholder*, p. 14. it is said, that what land soever is not copyhold, is freehold. And in *Calthr.* 41. it is said, that copyhold lands may differ in name, but not in nature; for although copyhold lands be specially so called, because holden by copy of court roll, and customary lands by some special custom; yet they are all holden in one general kind, that is, by custom, and the diversity of their names doth not alter the nature of their tenure. Nevertheless, although all copyhold lands are customary, yet all customary lands are not copyhold, and consequently, as such, do not qualify a man to serve on juries. Of which kind of customary lands not being copyhold, the greater part of the county of *Westmorland* in particular doth consist. For which cause (and by reason of the number of persons disqualified by being quakers) the jurors in that county are in comparison but few. To remedy which inconvenience, it seemeth not unreasonable, that in the statutes limiting the qualification of jurors, amongst other denominations of tenure, the word *customary* should be inserted; for why should a copyholder of 10 l a year be obliged to serve, and a customary tenant of 100 l a year be exempted?

Jurors on trials
of foreigners.

4. As to the strangers *per medietatem lingue* above-mentioned, it is enacted by the 28 Ed. 3. c. 13. that in inquests to be taken amongst aliens and denizens, before any judges, one half of the inquest shall be denizens, and the other half aliens, if so many there be in the place who are not parties; if not, then so many as there are.

And by the 27 Ed. 3. *fl.* 2. c. 8. Before the mayor of the staple, if both parties be strangers, the inquest shall be taken by strangers; if both be denizens, by denizens; if the one party be denizen, and the other alien, half of the jury shall be denizens, and half aliens.

And these aliens need not have any qualification by their estate. 18 H. 6. c. 29.

But it seems that the *English* half of the jury ought to have estates of the same value as in other cases. 2 Haw.

419. But by the 13 & 14 Ch. 2. c. 11. *fl.* 11. In actions concerning tonnage and poundage, or ships or goods to be forfeited by reason of unlawful importation or exportation, there

there shall not be any party jury, but such only as are natural born subjects.

5. In towns corporate: Trials of felons shall be by men worth 40 l in goods, though they have no freehold. 23 H. Jurors in towns corporate.

8. c. 13.

And in 3 Salk. 81. it is said, that when the jury are of a town corporate, it is no challenge that they are not freeholders.

And the statutes which require jurors to be of such and such sufficiency, do generally except cities, boroughs, and towns corporate.

6. In the torn: Jurors shall have 20 s a year freehold; In the torn. or 26 s 8 d copyhold. 1 R. 3. c. 4.

7. In the leet: It is said by some books, that any person happening to be present at a court leet, or to be riding by the place where it is holden, may for the want of jurors be compelled by the steward to be sworn, whether he be resident within the precincts of the leet, or not: by which it seems to be implied, that any person whatsoever is capable of being put upon the jury in a court leet. 2 How. 69. In the leet.

8. The coroner's jury, upon inquests taken before him, are to be of the neighbouring towns; but no qualification by estate is required by any statute. 2 H. H. 152. On the coroner's inquest.

9. Jurors to inquire of the concealments of other inquests, shall have lands of 40 s a year. 3 H. 7. c. 1. On other jurors concealing presentments.

10. Jurors to inquire of forcible entry or detainer, shall have lands or tenements of 40 s a year. 8 H. 6. On inquiries of forcible entry.

11. Jurors to inquire of riots, shall have 20 s a year, charter land, or freehold; or 26 s 8 d copyhold. 19 H. On inquiries of riots.

12. In Yorkshire: No person having 150 l a year, of such estate as will qualify him to serve on juries, shall be summoned to the sessions; but only persons less able to bear the expence of attending the assizes. 1 An. B. 2 c. 13. f. 3. In Yorkshire.

And if he doth serve at the sessions it shall not satisfy his turn, but he shall attend the assize nevertheless. 10 Ann. c. 14. f. 6.

13. Young men under 21 years of age, shall not serve upon juries. 7 & 8 W. c. 32. f. 4. Persons under age.

14. Old men above 70, persons continually sick, or being diseased at the time of the summons, or not dwelling in the county, shall not be put in juries of petit assizes; on pain of the sheriff paying damages to the party Persons above age, infirm, absent.

ty grieved, and being amerced to the king. 13 Ed. 1. f. 1. c. 38.

And the equity of this statute, and also the reason of the thing, seem plainly so far to extend to grand juries, that if it shall appear, that any of the persons abovementioned be returned on a grand jury, the court will easily excuse their non appearance. But it seems clear, that any such persons being returned on a grand jury, may lawfully serve upon it if they think fit. 2 Haw. 216.

In what case women shall be jurors.

15. The jury ought to be men; yet there shall be a jury of women, to try if a woman be enfeint, upon the writ *de ventre inspiciendo*. Tr. p. pais. 86.

Surgeons.

16. By the 5 H. 8. c. 6. and 18 G. 2. c. 15. Freemen of the company of surgeons in London, are exempted from serving upon juries.

Apothecaries.

17. And by the 6 & 7 W. c. 4. Apothecaries, within London and seven miles thereof, being free of the company; and country apothecaries, who have served seven years apprenticeship, — shall be exempted from serving on juries, and their return shall be void, unless they shall voluntarily consent to serve. 6 & 7 W. c. 4.

Clergymen.

18. Clergymen cannot be impanelled upon juries. Lamb. 396.

Dissenting teachers.

19. Dissenting teachers, qualified under the toleration act, are exempted from serving on juries. 1 W. c. 18. f. 11.

Quakers.

20. Also quakers. 7 & 8 W. c. 34. f. 6.

Writs of exemption.

21. By the 4 & 5 W. c. 24. f. 21. No writ *de non posuendis in assis & juratis*, shall be granted, unless upon oath made, that the suggestions upon which it is granted, are true.

And the jurors ought to come in person and claim their privilege; for the sheriff cannot return it. Tr. p. pais. 87.

II. Of making and returning lists of jurors.

Precepts to the high and petty constables.

1. The justices at *Midsummer* sessions, shall issue forth their warrants (A) under the hands and seals of two or more of them, to the high constables, requiring them to issue forth their precept to the petty constables, thereby directing and requiring them to make and return true lists in writing, of the names and places of

of abode, of all persons within their respective constablewicks, qualified to serve on juries, with their titles and additions, between the ages of 21 and 70. High constable failing to issue his precept, shall forfeit 10 l, on conviction at the assizes or sessions. 7 & 8 W. c. 32. f. 4. 8 & 9 W. c. 10. 3 & 4 An. c. 18. f. 5.

2. The petty constables, on request to any parish officer who shall have in his custody any of the rates for the poor or land tax, shall have free liberty to inspect such rates, and take from thence the names of freeholders, copyholders, or other persons qualified to serve on juries, dwelling within their respective precincts. Petty constables may inspect the rates.

3 G. 2. c. 25. f. 1.

3. And shall yearly, 20 days at least before *Michaelmas*, upon two or more *sundays*, fix on the door of the church, chapel, and every other publick place of religious worship, an exact list of persons intended to be returned; and shall leave at the same time a duplicate thereof, with the churchwarden or overseer, to be perused by the parishioners without fee, to the end that notice may be given of persons qualified who are omitted, or of persons inserted by mistake who ought to be omitted. Lists to be put upon the church door.

3 G. 2. c. 25. f. 1.

4. And if such petty constable shall wilfully omit any person who ought to be inserted, or insert any one who ought to be omitted, or shall take any reward for omitting or inserting any person: he shall forfeit 20 s, on conviction before one justice, on confession, or oath of one witness; half to the informer and half to the poor of the parish or place, for which the list is returned: if not paid in five days, to be levied by distress. And such justice shall, in writing under his hand, certify the same to the next sessions; who shall direct the clerk of the peace to insert or strike out the name of such person so inserted or omitted wrongfully. Penalty on the petty constable, for inserting persons wrongfully.

3 G. 2. c. 25. f. 2.

5. The said petty constables, at *Michaelmas* sessions, shall deliver in the lists in open court. 7 & 8 W. c. 32. Lists to be delivered in at the sessions.

6. Or instead of this, after they have compleated their lists, it shall be sufficient if they subscribe the same in the presence of one justice, and at the same time attest the truth thereof upon oath to the best of their knowledge or belief: And then the said lists, being first signed by the justice, and subscribed as aforesaid, shall be delivered by the said petty constables

to the high constables, who shall deliver in the same at the said sessions in open court, attesting at the same time upon oath the receipt of such lists from the petty constables, and that no alteration hath been made therein since their receipt thereof. 3 G. 2. c. 25. f. 7.

Penalty on petty constables for not returning lists.

6. The constable failing to make return shall forfeit 5 l. to the king, to be recovered by bill, plaint, or information. 7 & 8 W. c. 32. f. 4.

Persons not qualified, how discharged.

7. And if any person, not qualified, shall find his name mentioned in such list, and the person required to make such list shall refuse to omit him, or think it doubtful whether he ought to be omitted; the justices at the sessions to which the lists shall be returned, on satisfaction from the oath of the party complaining, or other proof that he is not qualified, may order his name to be struck out, or omitted to be entered in the book. 3 G. 2. c. 25. f. 1.

Lists to be entered by the clerk of the peace;

8. The justices shall then cause the lists to be fairly entered in a book by the clerk of the peace, to be by him provided and kept for that purpose amongst the records of the sessions. 7 & 8 W. c. 32. f. 4.

on pain of 20 l.

9. Clerk of the peace neglecting his duty herein, shall forfeit 20 l. to him who shall sue by indictment at the sessions. 3 G. 2. c. 25. f. 2.

Duplicates thereof to be delivered to the sheriff.

10. Duplicates of the said lists, when delivered in at the sessions, and entered in such book to be kept by the clerk of the peace for that purpose, shall during the said sessions, or within ten days after, be delivered by the clerk of the peace to the sheriff. 3 G. 2. c. 25. f. 2.

The same to be entered by the sheriff.

11. And the sheriff shall immediately take care, that the names shall be entered alphabetically, with their additions and places of abode, in a book to be kept by him for that purpose. 3 G. 2. c. 25. f. 2.

Sheriff shall return none but those in the duplicates.

12. And if the sheriff shall summon and return any person to the assizes, whose name is not in the duplicates; the judge may on examination in a summary way, fine him not exceeding 10 l. nor less than 40 s. 3 G. 2. c. 25. f. 3.

III. Of the sheriff's summoning and returning jurors.

Sheriff to summon jurors to the sessions.

1. By a clause in the commission of the peace, it is said, — We command our sheriff, that at certain days, which you (the justices) shall make known to him, he cause

cause to come before you so many and such good and lawful men of his bailiwick (as well within liberties as without) by whom the truth shall be the better known and inquired into.

2. It seems that justices of the peace may not order a jury to be returned immediately, nor on the same day, for the trial of a prisoner arraigned before them, as justices of gaol delivery may, unless the crime amount to felony, or the party consent to be tried immediately. 2 *Haw.* 406.

Whether the sessions may order a jury to be returned immediately.

3. Also it seems that a jury may not regularly be returned before justices of the peace in their sessions, by a bare award of the court, as before justices of gaol delivery; but that there ought to be a particular precept to the sheriff for that purpose. 2 *Haw.* 405, 406.

Whether by award of the court without precept.

4. But in cases of felony it is agreed (4 *Inst.* 164.) and is the usual practice, after the prisoners are arraigned and have pleaded to the country, for the justices to issue a precept to the sheriff, in nature of a *venire facias*, which may bear teste the same day that the prisoners plead, commanding the sheriff to return 24 jurors, to try the issue upon such a day; or they may make it returnable the same day that the prisoner pleads, as at the hour of one in the afternoon, or the like: and this precept must be in the name, and under the seals of the justices, or two of them (1 *Q.*) and not barely upon the award of the roll. 2 *H. H.* 261, 262.

How they may do the same in cases of felony.

5. The writ of *venire facias* by the statute of the 4 & 5 *IV. c.* 24. shall be after this form: *The king, &c. We command, &c. that you cause to come before, &c. twelve free and lawful men of the vicinage of A. every of whom shall have 10 l of land, tenements, or rents, by the year, at least; by whom, &c. and who neither, &c. f. 15.* (B.)

Form of the *venire facias*.

6. The reason why they are required to come from the vicinage is, for that the neighbours are presumed to know what is done in the neighbourhood. 1 *Inst.* 158.

Why the jurors shall be returned of the neighbourhood.

But yet this is not necessarily required; for they of one side of the county, are by law of the neighbourhood, to try an offence of the other side of the county. 2 *H. H.* 264.

And by the 4 *An. c.* 16. *f.* 6, 7. and 24 *G. c.* 18. *f.* 3. to prevent challenges for default of hundredors, every *venire facias* for the trial of an issue in any action in the

the courts at *Westminster*, or in any action or information on a penal statute, shall be awarded of the body of the county where such issue is triable.

How many shall
be returned and
serve.

7. And although the words of the writ be twelve, yet by the ancient course, the sheriff must return 24, for the expedition of justice; for if twelve only should be returned, there would seldom a full jury appear; and in this case usage and custom makes the law. 2 *H. H.* 263. *Read. Jur.*

But the general precept that issues before a session is, to return 24, and commonly the sheriff returns upon that precept 48. 2 *H. H.* 263.

But in issues of *nisi prius*, the sheriff shall, upon his return of the writ of *venire facias juratores* (unless in causes intended to be tried at bar, or where a special jury shall be appointed) annex a panel to the said writ, containing the christian and surname, additions, and places of abode, of a competent number of jurors, the names of the same persons to be inserted in the panel annexed to every *venire facias*, for the trial of all issues at the same assizes; which number of jurors shall be not less than 48 in any county, nor more than 72, unless the judges shall order otherwise. And the writs of *habeas corpora juratorum*, or *distingas*, subsequent to such writ of *venire facias juratores*, need not have inserted in the bodies of such writs the names of all the persons contained in such panel, but it shall be sufficient to insert in the mandatory part of such writs respectively, *the bodies of the several persons named in the panel annexed to this writ*, or words of the like import, and to annex to such writs respectively panels, containing the same names as were returned in the panel to such *venire facias*, with their additions and places of abode, that the parties concerned in any such trials may have timely notice of the jurors who are to serve at the next assizes, in order to make their challenges to them, if there be cause: and the persons named in such panels shall be summoned at the next assizes and no other. 3 *G. 2. c. 25. s. 8.* It is true, this gives them an opportunity of knowing how to make their challenges; but it also gives them an opportunity to another purpose, namely, of labouring the jurors,——a practice which cannot be too much discouraged.

In *Wales*, the sheriff shall summon out of every hundred or commote, not less than ten, nor more than fifteen;

teen; unless the judges shall order otherwise. 3 G. 2. c. 25. f. 9.

And in the counties palatine: The sheriff shall summon not less than 48, nor more than 72 (unless the judges order otherwise); and shall eight days before the courts be held, cause a list to be made of the persons summoned, which shall be hung up in the sheriff's office, to be inspected by any person. 3 G. 2. c. 25. f. 10.

Upon the grand jury; there may be, and usually are, more than 12: but if there be 12 assenting, tho' others dissent, it is not necessary for the rest to agree. 2 H. H. 161.

But upon a trial by a petit jury; it can be by no more nor less than 12, and all assenting to the verdict. 2 H. H. 161.

In the county of York; only one panel of 48 freeholders and copyholders, and no more, shall be returned to serve on the grand inquest at the assizes; and at the sessions, not above 40, either upon the grand inquest, or other service there. 7 & 8 W. c. 32. f. 8.

8. Every summons of jurors shall be made by the sheriff, his officer, or lawful deputy, six days before at the least (and in Wales eight days before, and in the countines Palatine 14 days before, 3 G. 2. c. 25. f. 9, 10.) shewing to every person so summoned the warrant under the seal of the office wherein they are appointed to serve; and if such juror be absent from the place of his habitation, notice of the summons shall be given by leaving a note thereof in writing, under the hand of such officer, at the dwelling house of such juror, with some person there inhabiting in the same. 7 & 8 W. c. 32. f. 5.

Time and manner of summons.

9. If the sheriff, his deputy, or bailiff, neglect their duty herein, or excuse any person for favour or reward; he shall forfeit 20 l, to him who shall sue. 7 & 8 W. c. 32. f. 6. Or, he may be fined 10 l, or under, by the judge of assize. 3 G. 2. c. 25. f. 6.

Penalty on the sheriff or bailiff neglecting.

And no bailiff, or other officer, shall summon any person, other than such whose name is specified in a mandate signed by the sheriff or under sheriff, and directed to such bailiff or other officer; on pain of 10 l, on a summary conviction before the judge of assize. 3 G. 2. c. 25. f. 6.

10. No persons shall be returned as jurors at the assizes; who have served within one year before in the county

How often they shall be summoned and serve.

county of *Rutland*, or two years before in any other county (not being a county of a city or town, and except the counties of *York* and of *Middlesex*); on pain that the sheriff, on examination and proof in a summary way, shall be fined by the judge not exceeding 5*l*. 3 *G. 2. c. 25. f. 4.*

And the sheriff shall enter in a book, the names of such persons as shall be summoned and shall serve at the assizes, with their additions, and places of abode alphabetically, and the times of their services; and every person who hath served, shall (on application by him made to the sheriff) have a certificate *gratis*, testifying his attendance: and the said book shall be transmitted to the succeeding sheriff. 3 *G. 2. c. 25. f. 5.*

In the county of *York*; They shall not be returned above once in four years, at the assizes or sessions. 7 & 8 *W. c. 32. f. 7. 10 An. c. 14. f. 5.*

And if the sheriff of the county of *York*, neglect to keep such book as above, or to enter the names, or to deliver over to his successor the entries made for four years next before, or to deliver the certificate *gratis*; he shall forfeit 100*l*, half to the king, and half to him that shall sue. 3 & 4 *An. c. 18. f. 3.*

And if he shall summon or return any juror, who shall have served within four years, and shall not on producing the certificate discharge the summons or return, and thereof give notice to the party summoned, six days before the assizes or sessions; he shall forfeit 20*l*, to the party, with full costs. 3 & 4 *An. c. 18. f. 4.*

In the county of *Middlesex*: No person shall be returned to serve as a juror, at any sessions of *nisi prius*, who hath been returned in the two terms or vacations next before; on pain of the sheriff being fined by the judge 5*l* or under. 4 *G. 2. c. 7. f. 2.*

And by the 7 & 8 *W. c. 32. f. 9.* The inhabitants of the city and liberty of *Westminster* shall be exempted from serving in any jury at the sessions for *Middlesex*, by reason of their attendance at the courts of *Westminster-hall*.

Jury of view.

11. In any actions brought in the courts at *Westminster*, where it shall appear to the court that it is necessary that the jurors shall have the view of the place in question, they may order special writs of *distingas* or *habeas corpora* to issue, by which the sheriff shall be commanded, to have six out of the first 12 of the jurors, or some greater number of them, at the place in

in question, some convenient time before the trial; who shall have the matters in question shewn to them by two persons in the said writs named; and the sheriff by a special return upon the same, shall certify that the view hath been had according to the command of the said writ.

4 *An. c. 16. f. 8.*

And by the 3 *G. 2. c. 25. f. 14.* Where a view shall be allowed, six or more of the jurors in the panel, who shall be consented to by the parties on both sides, or their agents, or if they cannot agree, by the proper officer or judges of the court, — shall have the view, and shall be first sworn, or such of them as appear, before any drawing, and others shall be drawn to make up the number.

12. *Tr. 8 W.* a rule was made, that when the master ^{Special jury.} is to strike a jury, viz. 48, out of the freeholders book, he shall give notice to the attornies of both sides to be present; and if the one comes, and the other does not, he that appears shall according to the ancient course strike out 12, and the master shall strike out other 12 for him that is absent. 1 *Salk. 405.*

But if by rule of court, the master is ordered to strike a jury, in case it be not expressed in such rule, that the master shall strike 48, and each of the parties shall strike out 12; the master is to strike 24, and the parties have no liberty to strike out any. 1 *Salk. 405. M. 8 W.*

And the party who shall apply for a special jury to be struck, shall pay the fees for the striking such jury, and shall not be allowed the same on taxation. 3 *G. 2. c. 25. f. 16.* And also shall pay all the expences occasioned by the trial of the cause, and shall have no other allowance for the same upon taxation of costs, than he would be intitled to, if the cause had been tried by a common jury; unless the judge shall in open court certify upon the back of the record, that the same was a cause proper to be tried by a special jury. 24 *G. 2. c. 18. f. 1.*

And no person who shall serve upon a special jury, shall be allowed more than the sum which the judge shall think reasonable, not exceeding one guinea, except in causes wherein a view is directed. 24 *G. 2. c. 18. f. 2.*

On a motion for a special jury, in the case of the *King* against *Maccartney*, T. 2 *G.* for the murder of the duke of *Hamilton*, it was held by *Parker* chief justice, that there cannot be a special jury in cases of

treason or felony; for the party must have the advantage of challenging 20 in case of felony, and 35 in case of high treason, without cause shewn. In cases of special juries, there are 48 brought before the master, and he takes 24; so there cannot be a rule for a good jury, nor for a special jury, in this case of a trial at bar; for the jury will be the same with or without such a rule, for they are all good juries in *Middlesex*, and so in all cases of jurors at the bar; and if there should be a special jury, it would take away the advantage the party has of challenging peremptorily, although not of shewing cause. So no rule was made in this case, lest the sheriff in all other cases, when there is no such rule, should not return a good jury. *Viner. Trial. (D. c. 2.) 5.*

Tales.

13. When a full jury at *nisi prius* (or on indictments, informations, or other actions on penal statutes, 4 & 5 *P. & M. c. 7.*) shall not appear, or shall be reduced below the number by challenge, the judges on request of the plaintiff (or defendant, 14 *El. c. 9.*) may command the sheriff to appoint so many other able persons of the county then present at the assizes, as shall make up a full jury; whose names shall be annexed to the panel. 35 *H. 8. c. 6. f. 6.*

And by the 4 & 5 *W. c. 24. f. 18, 19.* these tales-men, (*tales de circumstantibus*) shall have each 5 l a year, of like estate as other jurors; in Wales 3 l.

But by the 7 & 8 *W. c. 32. f. 3.* Tales-men in *nisi prius* shall be returned out of the other panels, returned to serve at the same assizes.

* And the parties may have their challenges to the tales, as to other jurors. 35 *H. 8. c. 6. f. 7.*

And if such tales-men, after they be called, be present, and do not appear, or after appearance do wilfully withdraw themselves, the judges may fine them; which shall be levied as issues forfeited by jurors, for default of their appearance at common law, have been accustomed to be levied. 35 *H. 8. c. 6. f. 9.*

By the 4 & 5 *W. c. 24. f. 20.* No fee shall be taken by any sheriff, clerk of assize, or any other person, for the return of any tales, or upon the account of any tales returned; on pain of 10 l, half to the prosecutor, and half to the king.

Addition to be returned.

14. No sheriff shall return any juror, without the addition of his dwelling, or some other addition by which he may be known; and no extract of issues shall be delivered

delivered out, without such addition; on pain of five marks to the king, and five marks to the party grieved; to be recovered in sessions, or elsewhere. 27 *El. c. 7.*

15. By the common law, jurors returned, and not appearing, shall lose and forfeit the issues returned upon them. 35 *H. 8. c. 6.* Jurors not appearing.

And if a juryman be called, and (being present) refuse to appear; or, having appeared, withdraw himself before he be sworn, the court may set a fine upon him at their discretion. 2 *H. H. 309.* 35 *H. 8. c. 6. f. 9.*

And by the 29 *G. 2. c. 19.* a juror not appearing and serving in any court of record within the city of *London*, or in any other city or town corporate, liberty, or franchise, after being openly called three times, and oath made of his having been summoned, shall (without reasonable excuse on oath or affidavit to the satisfaction of the court) be fined not more than 40 s, nor less than 20 s, and on refusal to pay to such person whom the judge or judges shall appoint to receive the same, they shall levy the same by warrant of distress, rendering the overplus, the reasonable charges of distress and sale being first deducted; the same to be paid to the proper officer of the place, to be applied to such uses as issues set on jurors or other fines set in such courts are by charter, usage, or prescription applicable.

16. If the clerk of assize, or other officer, shall record the appearance of any person who did not appear; he shall, on conviction before the judge of assize in a summary way, forfeit not exceeding 10 l, nor under 40 s. 3 *G. 2. c. 25. f. 3.* Penalty of recording persons who did not appear.

17. Last of all; The name of each person summoned to try the issues of *nisi prius*, with his addition and place of abode, shall be written in several and distinct pieces of parchment or paper, as near as may be of equal size, and delivered to the marshal by the under sheriff. And the same shall by the marshal be rolled up, all, as near as may be, in the same manner, and put together in a box or glass to be provided for that purpose. And when any cause shall be brought on to be tried, some indifferent person by direction of the court, shall in open court draw out 12 of the said parchments or papers one after another. And if any of the persons, whose names shall be so drawn, shall not appear, or be challenged and

set aside; then such further number, until 12 be drawn who shall appear, and after all causes of challenge, shall be allowed as fair and indifferent. And the said 12 persons so first drawn and appearing, and approved as indifferent, their names being marked in the panel, and they being sworn, shall be the jury to try the cause. And the names of the persons so drawn and sworn, shall be kept apart by themselves in some other box or glass to be kept for that purpose, till such jury shall have given in their verdict, and the same is recorded, or until such jury shall by consent of the parties, or leave of the court, be discharged. And then the same names shall be rolled up again, and returned to the former box or glass, there to be kept with the other names remaining at that time undrawn. And so *toties quoties*, as long as any cause remains then to be tried. Provided, that if any cause shall be brought on to be tried, before the jury, in any other cause shall have brought in their verdict, or be discharged; the court may order 12 of the residue of the said parchments or papers, to be drawn as aforesaid. 3 G. 2. c. 25. s. 11, 12.

IV. Of the challenge of jurors.

And herein,

i. *Of the several kinds of challenge.*

ii. *When the challenge is to be taken.*

iii. *How the challenge shall be tried.*

iv. *How panels may be reformed by the court, without challenge.*

i. *Of the several kinds of challenge.*

Two kinds of challenge.

There are two kinds of challenge; either to the *array*, by which is meant the whole jury as it stands *arrayed* in the *panel*, or little square *pane* of parchment on which the jurors names are written: Or to the *polls*, by which are meant the several particular persons or *heads* in the array. 1 *Inst.* 156, 158.

To the array;

1. Challenge to the *array*, is in respect of the partiality or default of the sheriff, coroner, or other officer that made the return: And this is two-fold;

(1) Prin-

(1) Principal challenge to the array: Which if it is made good, is a sufficient cause of exception, without leaving any thing to the judgment of the triers. Principal challenge to the array.

Causes of challenge of this sort, are such as these: If the sheriff, or other officer, be of kindred or affinity to the plaintiff or defendant, if the affinity continue. If any one or more of the jury be returned at the denomination of the party plaintiff or defendant, the whole array shall be quashed. If the plaintiff or defendant have an action of battery against the sheriff, or the sheriff against either party, this is a good cause of challenge. So if the plaintiff or defendant have an action of debt against the sheriff; but otherwise it is, if the sheriff have an action of debt against either party. Or if the sheriff have parcel of the land depending upon the same title. Or if the sheriff, or his bailiff which returned the jury, be under the distress of either party: Or if the sheriff, or his bailiff, be either of counsel, attorney, officer, or servant of either party; gossip; or arbitrator in the same matter, and treated thereof. *1 Inst. 156.*

And formerly, if a peer was plaintiff or defendant, and a knight was not returned of the jury, the array might have been quashed: But now by the 24 G. 2. c. 18. s. 4. No challenge shall be taken to any panel of jurors, for want of a knight's being returned of the panel, where a peer is a party.

And the subject may challenge the array against the king; as in traverse of an office, he that traverseth may challenge the array: And so it is in case of life. *1 Inst. 156.*

And where a subject may challenge the array, for undifferency, there the king being a party may also challenge for the same cause. *1 Inst. 156.*

The array challenged on both sides shall be quashed. *1 Inst. 156.*

(2) Challenge to the array, for favour. He that taketh this must shew in certain the name of him that made it, and in whose time, and all in certainty. This kind of challenge, being no principal challenge, must be left to the discretion and conscience of the triers. As if the plaintiff or defendant be tenant to the sheriff, this is no principal challenge, but he may challenge for favour, and leave it to trial. So affinity between the son of the sheriff, and the daughter of the party, or the like, is no principal challenge, but to the favour; but if the

Challenge to the array for favour.

sheriff marry the daughter of either party, or the like, this (as hath been said) is a principal challenge. *1 Inst.* 156.

But where the king is party, one shall not challenge the array for favour; because in respect of his allegiance, he ought to favour the king more: But if the sheriff be a menial servant of the king, there the challenge is good. *1 Inst.* 156. By which seems to be meant, that such challenge is not good, without shewing some actual partiality in the sheriff. *2 Haw.* 419.

But the king may challenge the array for favour. *1 Inst.* 156.

To the polls;

Perem- tory
challenge to the
polls.

2. Challenge to the polls is threefold: *1*

(1) Peremptory. This is so called, because a person may challenge peremptorily, upon his own dislike, without shewing of any cause.

This peremptory challenge shall not be allowed to the king; for it is provided by the *33 Ed. 1. c. 14.* that he who challenges a juror for the king, shall shew cause, and the truth thereof shall be inquired of. And this extends as well to criminal, as civil causes. However, if the king challenge a juror, he need not shew any cause of his challenge, till the whole panel be gone through, and it appear that there will not be a full jury without the person challenged. And if the defendant, in order to oblige the king to shew cause, presently challenge all the rest, yet it hath been adjudged, that the defendant shall be first put to shew all his causes of challenge, before the king need to shew any. *2 Haw.* 413.

And this peremptory challenge is not allowable to the party against the king, but only in case of treason or felony, in favour of life. *1 Inst.* 156.

But in case of treason or felony, the prisoner by the common law might peremptorily challenge 35, which was under the number of three juries; but by the statute of the *22 H. 8. c. 14. s. 6.* the number is reduced to 20, in petit treason, murder and felony; and in case of high treason, and misprison of high treason, it was taken away by the statute of the *33 H. 8. c. 23.* but by the statute of the *1 & 2 P. & M. c. 10.* the common law was again revived for any treason, and therein the prisoner shall have his peremptory challenge to the number of 35. *1 Inst.* 156.

But as to all murders and other felonies, the statute of the *22 H. 8. c. 14.* taking away the peremptory challenge of above 20 stands in force. *2 H. H.* 269. But if the party

party challenge above that number, he shall not have judgment of death, but his challenge shall be over-ruled, and he shall be put upon his trial. *H. Pl.* 259. 2 *H. H.* 270.

(2) Principal challenge to the polls: Where cause is shewn, but which if found true, stands sufficient of itself, without leaving any thing to the triers. Principal challenge to the polls.

Causes of principal challenge to the polls, are such as these:

A peer is not to be sworn on juries, and he may be challenged by either party, or may bring a writ of privilege for his discharge. 1 *Inst.* 156. 2 *Haw.* 415.

Want of freehold, is a good cause of challenge. 1 *Inst.* 156.

Also, if a person is an alien. 1 *Inst.* 156.

If the juror be within the age of 21, it is a good cause of challenge. 1 *Inst.* 157.

If a juror is above the age of 70, or is sick, or is non resident in the county, he may sue out a writ of privilege for his discharge; but if he be returned and appear, he can neither be challenged by the party, nor excuse himself from not serving, if there be not enow without him. 2 *Haw.* 418.

If the juror be of blood or kindred to either party, this is a principal challenge; for that the law presumeth that one kinsman doth favour another, before a stranger; and how far remote soever he is of kindred, yet the challenge is good. 1 *Inst.* 157.

Affinity, or alliance by marriage, is a principal challenge, if the same continues, or issue be had; otherwise, it is but to the favour. 1 *Inst.* 157.

If the juror be godfather to the child of the plaintiff or defendant, or they to his child, this is allowed to be a good challenge in our books. 1 *Inst.* 157.

If the juror hath part of the land that dependeth upon the same title, it is a principal challenge. 1 *Inst.* 157.

It hath been allowed a good cause of challenge, on the part of the prisoner, that the juror hath declared his opinion beforehand, that the party is guilty, or will be hanged, or the like. 2 *Haw.* 418.

Likewise if the juror gave a verdict before, for the same cause, or upon the same title or matter, though between other persons. 1 *Inst.* 157.

So likewise one may be challenged, that he was indicator of the plaintiff or defendant in the same cause; for such

a one, it may be thought, will not falsify his former oath. *Lamb. 554.* And if a grand juryman who was one of the indictors in the same cause, be returned upon the petit jury, and do not challenge himself, he shall be fined.

2 *H. H.* 309.

If a juror hath been an arbitrator, chosen by the plaintiff or defendant in the same cause; and hath been informed thereof, or treated of the matter, this is a principal challenge; otherwise, if he were chosen indifferently by either of the parties. 1 *Inst.* 157.

If he be of counsel, servant, or of fee, of either party, it is a principal challenge. 1 *Inst.* 157.

Also, if a juryman, before he be sworn, take information of the case, this is cause of challenge. 2 *H. H.* 306.

If any, after he be returned, do eat and drink at the charge of either party, it is a principal cause of challenge. 1 *Inst.* 157.

But it is not a principal challenge to a juror, but only to the favour, that the prosecutor was lately entertained at his house. 3 *Salk.* 81.

Actions brought by the juror against either of the parties, or by either of the parties against him, which imply malice or displeasure, are causes of principal challenge; other actions, which do not imply malice or displeasure, are but to the favour. 1 *Inst.* 157.

In a cause where the parson of a parish is party, and the right of the church cometh in debate, a parishioner is a principal challenge. 1 *Inst.* 157.

If either party labour the juror, and give him anything to give his verdict, this is a principal challenge; but if either party labour the juror to appear, and to do his conscience, this is no challenge at all, but lawful for him to do it. 1 *Inst.* 157.

That the juror is a fellow-servant with either party, is no principal challenge, but to the favour. 1 *Inst.* 157.

If the juror be attainted or convicted of treason or felony, or for any offence to life or member, or in attain for a false verdict, or for perjury as a witness, or in a conspiracy at the suit of the king, or in any suit (either for the king or for any subject) be adjudged to the pillory, tumbrel, or the like, or to be branded or stigmatized, or to have any other corporal punishment, whereby he becometh infamous; these, and the like, are principal causes of challenge. 1 *Inst.* 158.

So it is, if a man be outlawed in trespass, debt, or any other action, for he is *exlex*, and therefore not a lawful man. *1 Inst.* 158.

And old books have said, that if he be excommunicated, he could not be of a jury. *1 Inst.* 158.

3. Challenge to the polls for favour. This is, when either party cannot take any principal challenge, but sheweth causes of favour, which must be left to the conscience and discretion of the triers, upon hearing their evidence to find him favourable, or not favourable. And the causes of favour are infinite. For all which, the rule of law is, that he must stand indifferent, as he stands unsworn. *1 Inst.* 157.

Challenge to the polls for favour.

ii. When the challenge is to be taken.

1. No challenge can be taken either to the array, or to the polls, till a full jury have appeared. *2 Haw.*

2. He that hath divers challenges must take them all at once. *1 Inst.* 158.

3. If a juror be challenged by one party, and after, be tried indifferent, it is time enough for the other party to challenge him. *1 Inst.* 158.

4. After challenge to the array, and trial duly returned, if the same party take a challenge to the polls, he must shew cause presently. *1 Inst.* 158.

5. If a juror be formerly sworn, if he be challenged, the party must shew cause presently, and that cause must rise since he was sworn. *1 Inst.* 158.

6. When the king is party, the defendant that challengeth for cause must shew his cause presently. *1 Inst.*

158.

7. But if a juror be challenged between party and party, and there be enough of the panel besides; the cause of challenge needeth not to be shewed, unless the other side challenges *touts peravail*. *Tr. p. pais* 143.

8. If a man, in case of treason or felony, challenge for cause, and he be tried indifferent, yet he may challenge him peremptorily. *1 Inst.* 158.

9. The prisoner must take all peremptory challenges himself, even in cases wherein he may have counsel. *2 Haw.* 413.

10. The challenge to the array, must be in writing (C); but where the challenge is to the polls, it is a short way by a verbal challenge. *Tr. p. pais* 172.

iii. *How the challenges shall be tried.*

1. The challenge of him who first challenged shall be first tried. *Tri. p. pais 144.*

2. If the array be challenged, it lies in the discretion of the court how it shall be tried; sometimes it is done by two coroners, and sometimes by two of the jury, with this difference, that if the challenge be for kindred in the sheriff, it is most fit to be tried by two of the jurors returned; if the challenge sound in favour of partiality, then by any other two assigned thereunto by the court. *2 H. H. 275.*

3. When any challenge is made to the polls, if it be before any jurors are sworn, the court shall chuse the triers; if two are sworn, they shall try; and if they try one indifferent, and he be sworn, then he and the two triers shall try another; and if another be tried indifferent, and he be sworn, then the two triers cease, and the two that be sworn on the jury shall try the rest: If the plaintiff challenge ten, and the defendant one, and the twelfth is sworn, because one cannot try alone, there shall be added to him one challenged by the plaintiff, and another by the defendant. *Finch. 112. 1 Inst. 158.*

4. The triers oath is, "You shall well and truly try, whether *A. B.* (the juryman challenged) stand indifferent between the parties to this issue: So help you god." *1 Salk. 152.*

5. If the cause of challenge touch the dishonour or discredit of the juror, he shall not be examined on his oath; but in other cases, he shall be examined on his oath, to inform the triers. *1 Inst. 158. 1 Salk. 153.*

6. If the array be quashed against the sheriff, the process of *venire facias juratores* shall be directed to the coroners; if against any of the coroners, then process shall be awarded to the rest; if against all of them, then the court shall appoint certain elisors (so named *ab eligendo*), against whose return no challenge shall be taken to the array, because they were appointed by the court; but he may have his challenge to the polls. *1 Inst. 158.*

iv. How panels may be reformed by the court, without challenge.

Besides the challenges which may be taken by the plaintiff or defendant, it is enacted by the 3 H. 8. c. 12. that in cases where the king is party, the justices of assize, or of the peace in sessions, may reform the panels of jurors, by putting to and taking out of the names of the persons impanelled by their discretion; and if the sheriff do not return the panel so reformed, he shall forfeit 20 l. half to the king, and half to him that shall sue.

And this extends both to grand and petit juries, 2 H. H. 156.

And hence it is, that if a prisoner be arraigned before the judge that sits upon the crown side, it is usual for the judge to send for a jury to the judge of *nisi prius*, and when the jury is brought, the sheriff returns them between the king and the prisoner; which is by virtue of this statute. 2 H. H. 265.

V. Of the demeanor of jurors in giving their verdict.

1. By the law of England, a jury after their evidence given upon the issue, ought to be kept together in some convenient place, without meat or drink, fire or candle, and without speech with any, unless it be the bailiff, and with him only if they be agreed. 1 Inst. 227.

Jurors to be kept without meat or drink.

2. And the bailiff ought to be sworn to keep them together, and not to suffer any to speak with them. 2 H. H. 296.

Bailiff sworn to keep them.

3. And if the jury after their evidence given to them at the bar, do at their own charges eat or drink, either before or after they be agreed on their verdict, it is finable, but it shall not avoid the verdict; but if before they be agreed on their verdict, they eat or drink at the charge of the plaintiff, if the verdict be given for him, it shall avoid the verdict; but if it be given for the defendant it shall not avoid it, and so on the contrary. But if after they be agreed on their verdict, they eat or drink at the charge of him for whom they do pass, it shall not avoid the verdict. 1 Inst. 227.

Whether eating and drinking shall avoid the verdict.

4. But

In what cases
they may eat or
drink.

4. But with the assent of the justices they may both eat and drink; as if any of the jurors fall sick before they be agreed of their verdict, then by the assent of the justices he may have meat or drink, and also such other things as be necessary for him and his fellows also, at their own costs, or at the indifferent costs of the parties, if they so agree: And if they cannot agree, the justices may in such case suffer the jury to have both meat and drink for a time, to see whether they will agree. *Dr. & St. 158.*

May re-examine
witnesses.

5. After their departure they may desire to hear one of the witnesses again, and it shall be granted so he deliver his testimony in open court; and also they may desire to propound questions to the court for their satisfaction, and it shall be granted, so it be in open court. *2 H. H. 296.*

May hear no evi-
dences but in
court.

6. But if the plaintiff after evidence given, and the jury departed from the bar, or any for him, do deliver any letter from the plaintiff to any of the jury concerning the matter in issue, or any evidence, or any writing touching the matter in issue, which was not given in evidence, it shall avoid the verdict, if it be found for the plaintiff, but not if it be found for the defendant, and so on the contrary. But if the jury carry away any writing unsealed, which was given in evidence in open court, this shall not avoid their verdict, albeit they should not have carried it with them. *1 Inst. 227.*

Cannot be dis-
charged without
giving a verdict.

7. A jury charged and sworn in a capital case, cannot be discharged (without the prisoner's consent) till they have given a verdict. *2 Hawk. 439. East. 22. Sir John Wedderbourn's case.*

And the king cannot be nonsuit, for he is in judgment of law ever present in court. *1 Inst. 227.*

May be fined for
saying they are
agreed, when
they are not.

8. If a jury say they are agreed, and it being asked who shall say for them, they say their foreman, but upon farther inquiry they are not agreed, they may be fined. *2 H. H. 309.*

Casting lots for
their verdict.

9. If a jury cast lots for their verdict, it shall be set aside, and they shall be fined for the contempt. *3 Kib. 805. 2 Lev. 140, 205. 2 Jones 83.*

M. 12 G. Hale and Cove. The jury having sat up all night, agreed in the morning to put two papers into a hat, marked *Plaintiff* and *Defendant*, and so draw lots; *Plaintiff* came out, and they found for the plaintiff, which happened to be according to the evidence, and the opinion of the judge. Upon motion for a new trial, it was agreed that the verdict must be set aside; but the question was,

whether the defendant should pay costs; the court inclined to give the plaintiff costs, comparing it to the case of a verdict against evidence; but at last it was agreed, that the costs should wait the event of a new trial. *Str.* 642.

10. The jury may give a verdict without testimony, when they themselves have conuſance of the fact. *Tr. p. pais 279. 1 Vent. 67.* Giving verdict without evidence.

11. But if they give a verdict on their own knowledge, they ought to tell the court so; but they may be sworn as witnesses; and the fair way is to tell the court before they are sworn that they have evidence to give. *1 Salk. 405.* Juror may be a witness.

For certainly it is of dangerous consequence, to receive a verdict against evidence given, on supposal that some of the jury knew otherwise, or on private information given by any jurymen to the rest, where he cannot be cross examined. *Tr. p. pais 209.*

12. After they be agreed, they may in causes between party and party, if the court be risen, give a private verdict, before any of the judges of the court; and then they may eat and drink; and the next morning in open court they may either affirm or alter their private verdict; and that which is given in court shall stand. *1 Inst. 227.* Private verdict.

But in criminal cases of life or member, the jury can give no private verdict, but they must give it openly in court. *1 Inst. 227.*

13. In all causes, and in all actions, the jury may give either a general or a special verdict, as well in causes criminal as civil; and this court ought to receive a special verdict, if pertinent to the point in issue. *3 Salk. 373.* Special verdict.

Thus if one be indicted for grand larceny, that is, for stealing goods above the value of 12d, yet the jury may find specially, that he is guilty, but that the goods are not above the value of 12d. In which case he shall only have judgment of petty larceny. *1 Hawk. 95.*

14. Jurors are to try the fact, and the judges ought to judge according to the law that ariseth upon the fact. *1 Inst. 226.* Jurors to try not the law, but the fact.

But if they will take upon them the knowledge of the law upon the matter, they may; yet it is dangerous, for if they mistake the law, they run into the danger of an attain; therefore to find the special matter is the safest way, where the case is doubtful. *1 Inst. 228.*

But

- But if the jury find according to the direction of the judge in matter of law, although the judge be mistaken, yet the jury shall not be liable to attain. *L. Raym.* 470.
- Finding against evidence.** 15. It hath been adjudged, that if the jury acquit a prisoner of an indictment of felony against manifest evidence, the court may, before the verdict is recorded, but not after, order them to go out again; and re-consider the matter; but this by many is thought hard, and seems not of late years to have been so frequently practised as formerly. However it is settled, that the court cannot set aside a verdict which acquits a defendant, of a prosecution properly criminal, as it seems that they may a verdict that convicts him, for having been given contrary to evidence and the directions of the judge, or any verdict whatsoever for a mistrial. *2 Haw.* 442.
- Varying from the verdict.** 16. After the verdict recorded, the jury cannot vary from it; but before it be recorded, they may vary from the first offer of their verdict, and that verdict which is recorded shall stand. *1 Inst.* 227.
- Verdict finding an impossibility.** 17. A verdict finding an impossible matter shall not be void, if at the same time it find the substance of the indictment; but the surplus shall be rejected. *1 Hawk.* 77.
- Verdict how far to be taken strictly.** 18. Verdict shall not be taken so strictly as pleadings; but the substance of the thing in issue ought to be always found. *3 Salk.* 373.
- Where they cannot agree.** 19. It is said, that if the jurors agree not, before the departure of the justices of gaol delivery into another county, the sheriff must send them along in carts, and the judge may take and record their verdict in a foreign county. *2 H. H.* 297. *Tr. p. pais* 274, 285. *1 Vent.* 97.
- But if the case so happen, that the jury can in no wise agree, as if one of the jurors knoweth in his own conscience the thing to be false, which the other jurors affirm to be true, and so he will not agree with them in giving a false verdict, and this appeareth to the justices by examination; the justices (as it seemeth) in such case may take such order in the matter, as shall seem to them by their discretion to stand with reason and conscience, by awarding a new inquest, or otherwise, as they shall think best by their discretion, like as they may do, if one of the jury die before the verdict. (*Dr. & Stud.* 158.)
- VI. OF

VI. Of the indemnity and punishment of jurors.

If a man assault or threatens a juror, for giving a verdict against him, he is highly punishable by fine and imprisonment; and if he strike him in the court, in the presence of the judge of assize, he shall lose his hand, and his goods, and profits of his lands during life, and suffer perpetual imprisonment. *1 Hawk. 57, 58.*

Threatening a juror.

Where more than one of the persons returned on a jury do appear, but not a sufficient number to take an inquest, and some of the others come within view of the court, or into the same town in which the court is holden, but refuse to come into the court to be sworn; upon proof of such matter, the court may, at the prayer of the party, order the jurors who appeared, to inquire what is the yearly value of such defaulters lands, and after such inquiry made, either summon them to appear, or punish them by forfeiting such sum as their lands have been found to be worth by the year, or some lesser sum, or impose a fine of the like sum upon them, without any farther proceeding. But it seems, that such juror shall be liable to lose his issues only for such default, and not the yearly value of his lands, unless the party pray it: But a juror who hath actually appeared, and after makes default, is said to be subject to such forfeiture of the yearly value of his lands, whether the party pray it or not; because his contempt appears to the court by its own record; yet even in this case, the court in discretion will sometimes only impose a small fine. Also it seems, that a juror who makes default without ever coming into the town wherein the court is holden, is liable only to lose his issues, or to be amerced, but not to be fined. *2 Hawk. 146.*

Juror not appearing.

And by the 3 Geo. 2. c. 25. s. 13. in causes of *nisi prius*, every person whose name shall be drawn, and who shall not appear, after being openly called three times, shall on oath made of his having been lawfully summoned, forfeit not exceeding 5*l*, nor less than 40*s*; unless some reasonable cause of absence be proved, by oath or affidavit to the satisfaction of the judge.

If the grand jury at the assizes or sessions will not find a bill, the court may impanel another inquest (by the 3 H. 7. c. 1.) to inquire of their concealments and thereupon set fines upon them; but it seemeth that fines set upon grand inquests in any other manner, are

not

Whether a grand jury may be fined for not finding a bill.

not warrantable by law: for the privilege of an *Englishman* is, that his life shall not be drawn in danger without due presentment or indictment, and this would be but a slender screen or safeguard, if every justice of the peace, or judge of assize, may make the grand jury present what he pleases, or otherwise fine them. 2 *H. H.* 160, 1.

Juror taking a
bribe.

4. If any juror do take of either party to give his verdict, he shall on conviction by bill or plaint, before the court where the verdict shall pass, forfeit ten times as much as he hath taken, half to the king and half to him that shall sue. 5 *Ed.* 3. c. 10. 34 *Ed.* 3. c. 8. 38 *Ed.* 3. st. 1. c. 12.

Whether a juror
may be prosecuted
for a verdict
in a criminal
matter.

5. It seems to be certain, that no one is liable to any prosecution whatsoever, in respect of any verdict given by him in a criminal matter, either upon a grand or petit jury; for since the safety of the innocent, and punishment of the guilty doth so much depend upon the fair and upright proceedings of jurors, it is of the utmost consequence, that they should be as little as possible under the influence of any passion whatsoever. And therefore, lest they should be biassed with the fear of being harrassed by a vexatious suit, for acting according to their consciences, the law will not leave any possibility for a prosecution of this kind. And as to the objection, that an attain lies against a jury for a false verdict in a civil cause, and that there is as much reason to allow of it in a criminal one; it may be answered, that in an attain in a civil cause, a man's property is only brought into question a second time, and not his liberty or life. 1 *Haw.* 191. *L. Raym.* 469.

Attain in a
civil cause.

6. But where the jurors give a false verdict upon an issue joined in any court of record, and judgment thereupon, the party grieved may bring his writ of attain in the king's bench or common pleas, upon which 24 of the best men of the county are to be jurors, who are to hear the same evidence which was given to the petty jury, and as much as can be brought in affirmance of the verdict, but no other against it. And if these 24 who are called the grand jury, find it a false verdict, then followeth this terrible judgment at the common law upon the petty jury; that the party shall be infamous, so as never to be received to be a witness, or a juror; shall forfeit his goods and chattels; and his lands and tenements shall be taken into the king's hands; his wife and children cast out of doors; his houses prostrated; his trees rooted up;

up, his meadows ploughed up; and his body imprisoned. And seeing all trials of real, personal, and mixt actions depend upon the oath of 12 men, prudent antiquity inflicted a strange and severe punishment upon them, if they were attainted of perjury. 1 *Inst.* 294. *Read. Jur.*

But now by the statute of 23 *H. 8. c. 3.* The severity of this punishment is moderated, if the writ of attaint be grounded upon that statute; but nevertheless, the party grieved may at his election, either bring his writ of attaint upon that statute, or at the common law. *Tr. p. pais* 222.

But this proceeding seems to be entirely diffused at this day; and in the place of attaint, motions are now usually made for new trials, when a verdict is against evidence. *Wood. b. 4. c. 4. 3 Blackst. c. 24. p. 389.*

But there can be no new trial for or against the king. *Tr. p. pais*, 210.

17. It seems to be the current opinion of the old books, that jurors are not subject to any prosecution for a false verdict except by way of attaint: And there seem to be very few ancient precedents for the punishment either of a grand or petit jury, merely for giving a verdict against evidence, or the direction of the court, either in a capital or civil matter. 2 *Haw.* 147.

And the fining and imprisoning of jurors for giving their verdict, hath several times been declared in parliament an illegal and arbitrary innovation, and of dangerous consequence to the government, and the lives and liberties of the subject. 2 *Keb.* 180. *Read. Jur.*

And in *Bushe's* case, it was resolved by all the judges, upon a full conference together, that a jury is not finable for going against their evidence, where an attaint lies. And where an attaint doth not lie, *L. Vaughan* says thus: "That the court could not fine a jurymen at the common law, where attaint did not lie, I think to be the clearest position that ever I considered, either for authority or reason of law." And one reason for this is, because the judge cannot fully know upon what evidence the jury give their verdict; for they may have other evidence, than what is shewn in court; they are of the vicinage, the judge is a stranger; they may have evidence from their own personal knowledge that the witnesses speak false, which the judge knows not of; they may know the witnesses to be stigmatized and infamous, which may be unknown to the parties or court. And if the jury knew no more than what they heard in court, and

Whether they may be fined for their verdict.

so the judge knew as much as they, yet they might make different conclusions, as oftentimes two judges do; and therefore as it would be a strange and absurd thing, to punish one judge for differing with another in opinion or judgment, so it would be worse for the jury, who are judges of the fact, to be punished for finding against the direction of him who is not judge of the fact. *Tr. p. pais* 225. *L. Vaugh.* 135.

And to say the truth, says Lord *Hale*, it would be the most unhappy case that could be to the judge, if he at his peril must take upon him the guilt or innocence of the prisoner: and if the judge's opinion must rule the matter of fact, the trial by jury would be useless. 2 *H. H.* 315.

But what if a jury give a verdict against all reason, convicting or acquitting a person indicted of felony, what shall be done? If the jury *convict* a man, against or without evidence, and against the direction of the court, the court may reprieve him before judgment, and acquaint the king, and certify for his pardon: if the jury *acquits* him in like manner, the court may send them back again (and so in the former case) to consider better of it, before they record the verdict; but if they are peremptory in it, and stand to their verdict, the court must take their verdict and record it. 2 *H. H.* 309, 310.

A. Warrant for the returning lists of jurors.

Westmorland. { To *Henry Holme*, gentleman, high constable of the West Ward, within the county aforesaid.

AT the general quarter sessions of the peace of our sovereign lord the king, holden at ——— in and for the said county, the ——— day of July, in the ——— year of the reign of our said sovereign lord George the third, of Great Britain, France, and Ireland, king, defender of the faith, and so forth, before us ——— esquires, and others our associates, justices of our said lord the king, assigned to keep the peace of our said lord the king in the county aforesaid, and also to hear and determine divers felonies, trespasses, and other misdemeanors in the said county committed:

These are to require you, upon sight hereof, to issue forth your precepts to all the petty constables within your said ward, thereby

thereby directing and requiring them, to make and return true lists of jurors, according to the form or to the effect here following; that is to say,

Westmorland, { To the constable of ———
West ward.

BY virtue of a warrant from his majesty's justices of the peace in and for the said county, at their general quarter sessions assembled, unto me directed, you are hereby required to make a true list in writing, containing the names and places of abode, together with the titles and additions, of all persons, between the ages of 21 and 70, dwelling within your constablewick, qualified to serve upon juries; that is to say, of every such person who hath in his own name, or in trust for him, within the county aforesaid, 10*l* a year above reprises, of freehold or copyhold lands or tenements, or of lands and tenements of ancient demesne, or in rents, in all or any of them, in fee simple, fee tail, or for the life of himself, or some other person; or having land in possession in his own right of 20*l* a year above the reserved rent, being held by lease for 500 years or more, or for 99 years, or any other term determinable on one or more lives: in order to the making of which list, you may, if you think it needful, apply to any parish officer, who shall have in his custody any of the rates for the poor or land tax, and from thence take the names of such persons so qualified. Which list so being made as aforesaid, you are required, upon two or more sundays, at least 20 days before Michaelmas next, to fix on the door of the church or chapel, and of every other publick place of religious worship within your parish or other precinct; and leave at the same time a duplicate thereof with a churchwarden or overseer of the poor, to be perused by the parishioners gratis. And the said list you are also further required to deliver in at the next general quarter sessions of the peace, to be holden in and for the said county, in open court; or otherwise, you may in the mean time apply to one of his majesty's justices of the peace in and for the said county, and in his presence subscribe the said list, and attest the truth thereof upon oath; and the same (being first also signed by the said justice) you may deliver to me, to be by me delivered in at the said next general quarter sessions. Given under my hand at Barnskew in the said county, the ——— day of ——— in the ——— year ———

Henry Holme, High Constable.

And this you the said high constable are in no wise to omit, upon the peril that shall ensue thereof. Given under our hands and seals the day and year first above written.

B. The form of a writ to the sheriff to summon jurors, for the trial of an issue joined; by the 4 & 5 W. c. 24. s. 15.

GEORGE the third, &c. To the sheriff of — greeting. We command you that you do not omit by reason of any liberty within your county, but that you enter therein, and cause to come before — twelve good and lawful men of the vicinage of — whereof every one hath such lands, tenements, or rents, as will qualify them to serve upon juries, and who are neither of affinity to — (the plaintiff) nor to — (the defendant); to hear and do those things, which on our behalf shall be then and there enjoined them: And have you then there this precept. *Witness* A. B. and C. D. at — the — day of —

Note; The general precept for summoning jurors to the sessions, is contained in the precept for summoning the sessions, in the title *Sessions*.

C. Challenge to the array, because the sheriff is of kindred to one of the parties; from Coke's entries.

AND now at this day, to wit — came the aforesaid A. the plaintiff, and B. the defendant, by their attornies, and the jurors were impanelled, and demanded, and came, and thereupon the aforesaid B. challengeth the array of the panel aforesaid, because he said that that panel was arrayed by one John Zouch, knight, now and at the time of making the array aforesaid, sheriff of the said county of Derby, which said sheriff is a kinsman of the aforesaid John Maners (the plaintiff); to wit, the son of George Zouch, esquire, son of John Zouch, knight, son of John Zouch, esquire, son of William lord Zouch, son of Alan lord Zouch, son of William lord Zouch, son of Elizabeth daughter of William lord Roos, father of William lord Roos, father of Thomas lord Roos, father

father of Eleanor mother of George Maners, knight, father of Thomas earl of Rutland, father of the aforesaid John Maners. And this he is ready to verify, whereupon he prayeth judgment, and that the said panel may be quashed. Which said challenge by ——— and by ——— triers, to this chosen and sworn, is found true. And therefore let the panel aforesaid be quashed and amoved, &c. Tr. p. pais 160.

Challenge because the panel was returned at the instance of the party.

And upon this, the said ——— challenges the array of the said panel, because he says, that that panel was arrayed by one J. S. esquire late sheriff of the county of ——— aforesaid, at the nomination of the said ——— and in his favour; which said challenge, by triers thereof sworn is found true.

For other forms of challenges, and proceedings thereupon, see *Tr. per pais* 159—184.

Justifiable homicide. See Homicide.



